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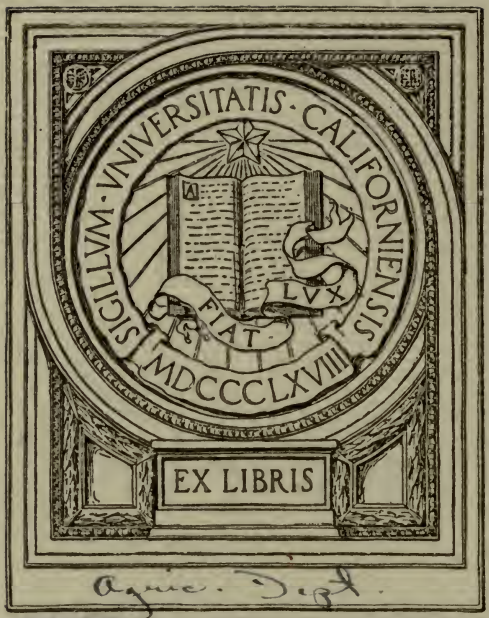

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WATER LAWS OF OREGON

1913

WATER LAWS

OF THE

STATE OF OREGON

COMPILED FROM
Lord's Oregon Laws and Session Laws
of 1911 and 1913

1913

PREPARED IN THE
OFFICE OF THE STATE WATER BOARD,
SALEM, OREGON, AND PUBLISHED
BY AUTHORITY OF THE
LEGISLATURE OF
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Second Wednesday in April and the
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CONSTITUTIONAL PROVISIONS

The constitution of Oregon contains no provisions directly relating to the diversion and use of water from public streams.

No administrative machinery for distributing public waters to those entitled thereto, was available until the adoption of what is commonly called the "Water Code," on February 24, 1909.

Similar laws have been upheld by the courts in Wyoming and Nebraska, (Farm Inv. Co. v. Carpenter, 9 Wyo. 110; 61 Pac. 267; Crawford v. Hathaway, 67 Neb. 325; 93 NW. 795), as being a proper exercise of the police power.

(The American and English Encyclopedia of Law, vol. 22, p. 916, defines police power in its broadest acceptation as "the general power of a government to preserve and promote the public welfare by prohibiting all things hurtful to the comfort, safety and welfare of society, and establishing such rules and regulations for the conduct of all persons, and the use and management of all property as may be conducive to the public interest.")

ERRATA.

Page 26, § 5 is not L. O. L., but § 5 of Ch. 86, L. 1913.
Page 36, read § 6575 instead of § 6675.
Page 41, read § 6838 instead of § 6638.
Page 42, read § 6839 instead of § 6639.
Page 72, read § 6447 instead of § 6477.

WATER LAWS OF OREGON

PART I.

1909 WATER CODE WITH AMENDMENTS

(*a*) Initiation of Rights.

§ 6594. Waters May Be Appropriated for Beneficial Use—Limitations. Subject to existing rights, all waters within the State may be appropriated for beneficial use, as herein provided, and not otherwise; but nothing herein contained shall be so construed as to take away or impair the vested right of any person, firm, corporation, or association to any water; *provided,* that the provisions of this act do not apply or extend to that certain stream situated in Multnomah County, Oregon, known as Multnomah Creek, and sometimes called Coon Creek, which stream forms Multnomah Falls, but said stream and the flow of water therein shall not be diverted or interrupted for any purposes whatsoever; *and also provided further,* that the provisions of this act do not apply or extend to the waters of the Columbia River beginning at a point on the Columbia River three (3) miles down stream from what is known as the Big Eddy at The Dalles and extending to a point ten (10) miles above the Celilo Falls on said river, but said stream and the flow of water therein shall not be diverted or interrupted for any purpose or purposes whatsoever, excepting by authority hereafter to be granted and given by the legislature of the State of Oregon. (L. 1909, c. 216, p. 319, § 1; L. 1913, c. 157, p. 273.)

In view of the general revisions of the law relating to the use of water effected by the legislation of 1909, it has not been considered that a full annotation of the earlier decisions affecting the law of water rights would be useful. A list of the more important decisions is given in this note, however.

On the subject of riparian rights, see *Willamette L. & T. Co.,* 7 Or. 355; *Taylor* v. *Welch,* 6 Or. 198; *Moore* v. *Haydon* v. *Long,* 8 Or. 244; *Coffman* v. *Robbins,* 8 Or. 278; *Shively* v. *Hume,* 10 Or. 76; *Shaw* v. *Oswego Iron Co.,* 10 Or. 371; *Shook* v. *Colohon,* 12 Or. 239, 6 Pac. 503; *Weiss* v. *Oregon Iron Co.,* 13 Or. 496, 11 Pac. 255; *Faull* v. *Cooke,* 19 Or. 455, 26 Pac. 662; *Jones* v. *Conn,* 39 Or. 30, 64 Pac. 855; *Salem Mills Co.* v. *Lord,* 42 Or. 82, 69 Pac. 1033; *Harrington* v. *Demaris,* 46 Or. 111, 77 Pac. 603; *Brown* v. *Gold Coin Min. Co.,* 48 Or. 277, 86 Pac. 361; *Morton* v. *Oregon S. L. Ry. Co.,* 48 Or. 444, 87 Pac. 151, 1046; *Williams* v. *Altnow,* 51 Or. 275, 95 Pac. 200; *Davis* v. *Chamberlain,* 51 Or. 304, 98 Pac. 154.

There is no such thing as prior riparian ownership so far as distribution of water for irrigation purposes between riparian owners is concerned; the rights of a riparian owner to the waters being a variable one, depending on use by other proprietors: *Hough* v. *Porter,* 51 Or. 318, 95 Pac. 732.

Act of Congress of July 26, 1866, c. 262, §9, 14 Stat. (U. S. Comp. St. 1901, p. 1437), relative to the appropriation of water, was merely a recog-

nition of rights existing at the time, rather than the creation of a new one: *Hough* v. *Porter, supra.*

The water flowing over the public domain is a part thereof, and the general government may grant or otherwise dispose of its riparian interest separate from the rest of the estate. *Hough* v. *Porter, supra.*

The legal effect of the language in Act of Congress March 3, 1877, c. 107, 19 Stat. 377 (U. S. Comp. St. 1901, p. 1548), namely, "There shall be and remain and be held free for the appropriation and use of the public for irrigation," etc., constitutes a reservation and dedication to the public of all interest, riparian or otherwise, held at the time by the national government, so far as such interests affect the uses for irrigation and other purposes there enumerated, from which it follows that this act abrogated the common law rule respecting riparian rights as to all lands settled upon or entered after March 3, 1877: *Hough* v. *Porter, supra.*

While the legal effect of the desert land act [act Congress March 3, 1877, c. 107, 19 Stat. 377 (U. S. Comp St. 1901, p. 1548)] was to abrogate the modified doctrine of riparian rights as to all lands to which title has been acquired after the enactment thereof, it does not go so far as to affect the rights originally giving rise to the doctrine of riparian rights; that is, for domestic and stock requirements: *Hough* v. *Porter, supra.*

Every riparian owner, therefore, regardless of the date of settlement, is entitled to the quantity of water reasonably essential to his domestic use and for the watering of his stock, including sufficient supply for the proper irrigation of such garden produce as may be essential to the proper sustenance of his family: *Hough* v. *Porter, supra.*

Settlement upon land bordering upon or through which a stream may flow, or to which a natural source of water supply may be adjacent, or upon which it may be situated, is in itself notice that sufficient water for domestic uses and requirements incident thereto are and will continue to be demanded; but, to constitute an appropriation for mining, irrigation, or power purposes, some steps towards a diversion thereof, or other good and sufficient notice, is necessary: *Hough* v. *Porter, supra.*

The references in the Code to riparian rights constitute a recognition of whatever riparian rights the landed proprietor may have, but do not attempt to define, nor to in any manner establish any rule respecting such interests. The case of *Sturr* v. *Beck,* 133 U. S. 541 (10 Sup. Ct. 350, 33 L. Ed. 761), together with Oregon cases, examined and held not in conflict with the conclusions here reached: *Hough v. Porter, supra; Coquille Mill & Merc. Co.* v. *Johnson,* 52 Or. 547, 98 Pac. 132.

§ 6624. Application—Unlawful Use or Diversion a Misdemeanor—Evidence.

Any person, association or corporation hereafter intending to acquire the right to the beneficial use of any waters shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with said construction, or proposed appropriation, make an application to the State Engineer for a permit to make such appropriation. Any person who shall willfully divert or use water to the detriment of others without compliance with law, shall be deemed guilty of a misdemeanor. The possession or use of water, except when a right of use is acquired in accordance with law, shall be *prima facie* evidence of the guilt of the person using it. [L. 1909, c. 216, p. 332, § 45.]

The cases of *Gardner* v. *Wright,* 49 Or. 609, 91 Pac. 286; *Watts v. Spencer,* 51 Or. 262, 94 Pac. 39; *Williams* v. *Altnow,* 51 Or. 275, 95 Pac. 200; 97 Pac. 539; *Davis* v. *Chamberlain,* 51 Or. 304, 98 Pac. 154; and *Hough* v. *Porter,* 51 Or. 318, 95 Pac. 732, 98 Pac. 1038; though decided prior to the enactment of the present statute, may be referred to as expounding the common law doctrine as to use and appropriation of waters previously in force in this State. *Hough* v. *Porter* especially contains full and ample discussions of the general doctrines of appropriation.

For cases decided since the enactment of this statute, the latter, alluding to the present water code, see *Whited* v. *Cavin,* 55 Or. 98, 105 Pac. 396; *Carnes* v. *Dalton,* 56 Or. 596, 110 Pac. 170.

A number of persons may be tenants in common in a water ditch, yet

each may have a right to water flowing through it differing in time and right: *McPhee* v. *Kelsey*, 44 Or. 193, 74 Pac. 401, 75 Pac. 713; *Carnes* v. *Dalton*, 56 Or. 596, 110 Pac. 170; *Ison* v. *Sturgill*, 57 Or. 109, 109 Pac. 579.

These cases, however, are inconsistent with *Beers* v. *Sharp*, 44 Or. 386, 75 Pac. 717. See also on this point dissenting opinion in Shaw *v. Proffitt*, 57 Or. 192, 109 Pac. 589.

§ 6626. Applications, Nature of.

Each application for permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed ditch, canal, or other work, the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use. If for agricultural purposes, it shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied. If for the construction of a reservoir, it shall give the height of dam, the capacity of the reservoir, and the uses to be made of the impounded waters. If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirements of the city. If for mining purposes, it shall give the nature of the mines to be served, the methods of supplying and utilizing the water. All applications shall be accompanied by such maps and drawings, in duplicate, and such other data as may hereafter be prescribed by the Board of Control, and such accompanying data shall be considered as a part of the application. [L. 1909, c. 216, p. 332, § 46.]

§ 6627. Applications, Approval of.

Upon receipt of an application, it shall be the duty of the State Engineer to make an indorsement thereon of the date of its receipt and to keep a record of the same. If upon examination the application is found to be defective, it shall be returned for correction or completion, and the date of, and reasons for the return thereof, shall be indorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps and drawings are filed in the office of the State Engineer within thirty days from the date of said return to the applicant. All applications which shall comply with the provisions of this act shall be recorded in a suitable book kept for that purpose, and it shall be the duty of the State Engineer to approve all applications made in proper form which contemplate the application of water to a beneficial use, but when the proposed use conflicts with determined rights, or is a menace to the safety

and welfare of the public, the application shall be referred to the Board of Control for consideration. It shall be the duty of the board to enter an order directing the refusal of such application, if, after full hearing, the public interest demands. An application may be approved for a less amount of water than that applied for, if there exists substantial reasons therefor, and in any event shall not be approved for more water than can be applied to a beneficial use. Applications for municipal water supplies may be approved to the exclusion of all subsequent appropriations, if the exigencies of the case demand upon consideration and order by the Board of Control. [L. 1909, c. 216, p. 333, § 47.]

The right to the beneficial use of water to be acquired under permit applied for under the provisions of this section, is not an opportunity to acquire a monopoly of the waters of a stream for promiscuous sale, but must contemplate a use on specific land which, when completed under Section 6633, shall become appurtenant to the land upon which it is applied. *Cookingham et al.* v. *Lewis et al.,* 114 Pac. 88.

When an application for a permit to appropriate water under the provisions of the above section is referred to the Board of Control for consideration, the board may refuse the application if on facts within their knowledge it appears that the permit would be a menace to the public welware; the word "and" in the phrase "a menace to the safety and welfare of the public," is construed to have the meaning of "or." A menace to either safety or welfare of the public would be sufficient grounds for a refusal of the application. *Cookingham et al.* v. *Lewis et al., supra.*

In making a reference of an application for a permit to appropriate water to the Board of Control under the provisions of the above section, the State Engineer is not limited to the recitals contained in the application, but may act upon any information he may have. *Cookingham et al.* v. *Lewis et al., supra.*

Plaintiffs filed with the State Engineer application for a permit to appropriate water of a certain stream, and later filed a supplementary application for additional water. Subsequent to both filings, F., one of the defendants, applied for a permit to construct a storage reservoir to store the waters of the same stream. The lands described in these various applications were withdrawn from entry under the public land laws of the United States for irrigation by the State under the Carey Act. Thereafter, the State Engineer referred all three said applications to the Board of Control on the ground that the proposed use in each case was a menace to the safety and welfare of the public, under the provisions of the above section. It was held that the Board of Control was authorized to direct the State Engineer to refuse the applications of the party or parties not securing a final contract with the Desert Land Board for the reclamation of said lands, and to approve the application of the party securing such contract, since none of the applications contemplated a beneficial use to which the water could be applied, none of the applicants having a right to reclaim the desert public land described in the applications till some agreement was consummated with the State for that purpose. *Cookingham et al.* v. *Lewis et al., supra.*

The State Engineer is not required to approve an application unless it complies with the requirements of the above section. He is not required to approve an application intended to appropriate water, or for a reservoir for a public, beneficial use, when the beneficial use, as set forth in the recitals of the application, is not, in fact, available to the applicant. He is only required to approve an application when it contemplates the appropriation of water to a beneficial use. *Cookingham* v. *Lewis* (rehearing), 114 Pac.....

§ 6628. Application, How Indorsed.

The approval or rejection of an application shall be indorsed thereon and a record made of such indorsement in the State Engineer's office. The application so indorsed shall be returned immediately to the applicant by mail. If approved, the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works, and to take

all steps required to apply the water to a beneficial use, and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the construction of the proposed work or the diversion and use of water so long as such refusal shall continue in force. [L. 1909, c. 216, p. 333, § 48.]

§ 6629. Assignment of Permit.

Any permit or license to appropriate water may be assigned, subject to the conditions of the permit, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the State Engineer. [L. 1909, c. 216, p. 333, § 49.]

§ 6630. Limitation on Time of Completing Work.

Actual construction work, except under applications by municipal corporations for municipal uses or purposes, shall begin within one year from the date of approval of the application, and the construction of any proposed irrigation or other work shall thereafter be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit, not to exceed five years from the date of such approval. The Board of Control shall, for a good cause shown, order and allow an extension of time, including an extension beyond the five-year limitation imposed by the approval of the State Engineer, within which irrigation or other works shall be completed or the right perfected, under any permit which may be submitted for its consideration by the State Engineer, and in determining said extension, shall give due weight to the considerations described and set out in subdivision 6, of Section 6595 of Lord's Oregon Laws. [L. 1909, c. 216, p. 333, § 50; L. 1913, c. 160, p. 277.]

What constitutes reasonable diligence must be determined from the facts of each case. Diligence requires such constancy and steadiness of purpose or of labor as is usual with men engaged in like enterprises. (*Pringle Falls Elec. Power & Water Co.* v. *Patterson et al.*, 132 Pac. 526.)

§ 6631. Appeals.

An applicant may appeal to the Board of Control for relief, which board may modify the decisions of the State Engineer if it shall appear that he has abused the authority reposed in him by law. Such appeal shall be taken within thirty days from the date of such decision by the State Engineer, and shall be perfected when the applicant shall have filed in the office of the board a copy of the order appealed from, together with a petition setting forth the appellant's reason for appeal, and such appeal shall be heard and determined upon such competent proof as shall be adduced by the applicant, and such like proofs as shall be adduced by the State Engineer. The State

Engineer shall not sit as a member of the board on such appeal. [L. 1909, c. 216, p. 333, § 51.]

§ 6632. Procedure Under Reservoir Permit.

All applications for reservoir permits shall be subject to the provisions of Sections 6624 to 6631, both inclusive, except that an enumeration of any lands proposed to be irrigated under this act shall not be required in the primary permit. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known herein as the secondary permit, in compliance with the provisions of Sections 6624 to 6631, both inclusive. Said application shall refer to such reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When beneficial use has been completed and perfected under the secondary permit, the division superintendent shall take the proof of the water user under such permit and the final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit. [L. 1909, c. 216, p. 337, § 58.]

The section above does not contemplate that the primary permit shall include the right to divert and use such stored water, but contemplates only the storage of the water in some locality where it will be utilized for irrigation; while the secondary permit provided for thereby contemplates that a user shall acquire a permanent ownership by an agreement with the owner for a specific quantity of the water for the needs of and use on his land, and when reclamation of the land is completed, the water becomes appurtenant to his land. *Cookingham et al.* v. *Lewis et al.*, 114 Pac. 88.

§ 6633. Water Right Certificate.

Upon it being made to appear to the satisfaction of the Board of Control that any appropriation has been perfected in accordance with the provisions of this act, it shall be the duty of the Board of Control to issue to the applicant a certificate of the same character as that described in Section 6649. Said certificate shall be recorded and transmitted to the applicant as provided in said section. Certificates issued for rights to the use of water for power development acquired under the provisions of this act shall limit the right or franchise to a period of forty years from date of application, subject to a preference right of renewal under the laws existing at the date of expiration of such franchise or right. [L. 1909, c. 216, p. 335, § 53.]

§ 6634. Date of Right.

The right acquired by such appropriation shall date from

the filing of the application in the office of the State Engineer. [L. 1909, c. 216, p. 335, § 54.]

(*b*) Determination of Rights.

§ 6635. Determination.

Upon a petition to the Board of Control, signed by one or more water users upon any stream, requesting the determination of the relative rights of the various claimants to the waters of that stream, it shall be the duty of the Board of Control, if, upon investigation, they find the facts and conditions are such as to justify, to make a determination of the said rights, fixing a time for beginning the taking of testimony and the making of such examination as will enable them to determine the rights of the various claimants. In case suit is brought in the circuit court for the determination of rights to the use of water, the case may, in the discretion of the court, be transferred to the Board of Control for determination as in this act provided. [L. 1909, c. 216, p. 321, § 11.]

See Silvies River Determination, 199 Fed. 495, in which the District Court of the United States for Oregon holds that a proceeding initiated under this section, and those following, is administrative rather than judicial; that it does not constitute a suit or controversy that could be removed to the federal court on the ground of diversity of citizenship; and that the State is a party to such determination.

A federal court in which a suit is brought to enjoin defendants therein from using waters of a stream should require the parties to proceed under this act or to bring in all other persons in interest as parties. *Pacific Live Stock Co.* v. *Silvies River Irrigation Co. et al.*, 200 Fed. 487.

§ 6636. Notice of Proceedings.

The board shall prepare a notice, setting forth the date when the engineer will begin an investigation of the flow of the stream and of the ditches diverting water therefrom, and a place and a time certain when the superintendent of the water division in which that stream is situated shall begin the taking of testimony as to the rights of the parties claiming water therefrom. Said notice shall be published in two issues of one or more newspapers having general circulation in the counties in which such stream is situated, the last publication of said notice to be at least thirty days prior to the beginning of taking testimony by said division superintendent, or for the measurement of the stream by the State Engineer, or his assistant. The superintendent taking such testimony shall have the power to adjourn the taking of testimony from time to time and from place to place, to suit the convenience of those interested. [L. 1909, c. 216, p. 322, § 12.]

§ 6637. Notice to Claimants.

It shall be the duty of said division superintendent to send by registered mail to each person, firm, or corporation, hereinafter to be designated as claimant, claiming the right to the

use of any of the water of said stream, and to each person, firm, or corporation owning or being in possession of lands bordering on and having access to said stream or its tributaries, in so far as such claimants and owners and persons in possession can reasonably be ascertained, a similar notice setting forth the date when the State Engineer or his assistant will begin the examination of the stream and the ditches diverting the waters therefrom, and also the date when the superintendent will take testimony as to the rights to the water of said stream. Said notice must be mailed at least thirty days prior to the date set therein for making the examination of the stream or the taking of testimnoy. [L. 1909, c. 216, p. 322, § 13.]

§ 6638. Statement of Claimant.

The division superintendent shall, in addition, inclose with said notice a blank form on which said claimant or owner shall present in writing all the particulars necessary for the determination of his right to the waters of the stream to which he lays claim, the said statement to include the following: The name and postoffice address of the claimant; the nature of the right or use on which the claim is based; the time of initiation of such right or the commencement of such use, and if distributing works are required; the date of beginning of construction; the date when completed; the date of beginning and completion of enlargements; the dimensions of the ditch as originally constructed and as enlarged; the date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year, the amount in subsequent years, with the dates of reclamation, and the amount and general location of the land such ditch is intended to irrigate; the character of the soil and the kind of crops cultivated, and such other facts as will show a compliance with the law in acquiring the right. [L. 1909, c. 216, p. 322, § 14.]

§ 6639. Statement to Be Under Oath.

Each claimant or owner shall be required to certify to his statements under oath, and the superintendent of the water division in which the testimony is taken is hereby authorized to administer such oaths, which shall be done without charge, as also shall be the furnishing of blank forms for said statement. [L. 1909, c. 216, p. 323, § 15.]

§ 6640. Testimony to Be Taken by Division Superintendent.

Upon the date named in the notice provided for herein for the taking of testimony, the division superintendent shall begin

the taking of such testimony and shall continue until completed. In case the division superintendent of any water division is directly or indirectly interested in the water of any stream of his division, or is prevented by illness or otherwise from the taking of such proofs, the taking of testimony so far as relates to said stream shall be under the direction of any other member of the Board of Control. [L. 1909, c. 216, p. 323, § 16.]

§ 6641. Fees.

At the time of the submission of proof of appropriation, or at the time of the taking of testimony for the determination of rights to water, the division superintendent shall collect from each of the claimants or owners a fee of $1.00 for the purpose of recording the water right certificate, when issued, in the office of the county clerk, together with the additional fee of fifteen cents for each acre of irrigated lands up to and including one hundred acres, and five cents per acre for each acre in excess of one hundred acres up to and including one thousand acres, and one cent for each acre in excess of one thousand; also twenty-five cents for each theoretical horsepower up to and including one hundred horsepower, and fifteen cents for each horsepower in excess of one hundred up to and including one thousand horsepower, and five cents for each horsepower in excess of one thousand horsepower up to and including two thousand horsepower, and two cents for each horsepower in excess of two thousand horsepower, as set forth in such proof, the minimum fee, however, for any claimant or owner in such cases to be $2.50, also a fee of $5.00 for any other character of claim to water. All fees collected by the division superintendent shall be accounted for at the following regular meeting of the Board of Control and paid by such board into the general fund of the State treasury, except, however, those fees due, or to be paid to the county clerk. But in cases of appropriations of water made under a permit issued under the provisions of this act, only $1.00 recording fee above provided shall be so collected by the division superintendent. [L. 1909, c. 216, p. 323, § 17.]

§ 6642. Notice Upon Completion of Testimony.

Upon the completion of the taking of testimony by the division superintendent, it shall be his duty at once to give notice by registered mail to the various claimants that at a time and place named in the notice not less than ten days thereafter, all of said evidence shall be open to inspection of the various claimants or owners, and said superintendent shall keep said evidence open to inspection at said places not

less than ten days, and such other time as fixed in the notice. Said superintendent shall also state in said notice the county in which the determination of the Board of Control will be heard by the circuit court; *provided*, that said cause shall be heard in the county in which said stream or some part thereof is situate. [L. 1909, c. 216, p. 324, § 18.]

§ 6643. Contests.

Should any person, corporation or persons owning any irrigation works, or claiming any interest in the stream or streams involved in the determination, desire to contest any of the rights of the persons, corporations or associations who have submitted their evidence to the superintendent as aforesaid, such persons, corporations or associations, shall within five days after the expiration of the period as fixed in the notice for public inspection, notify the superintendent in writing, stating with reasonable certainty the grounds of their proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney, and the said division superintendent shall notify the said contestant and the person, corporation or association, whose rights are contested, to appear before him at such convenient place as the superintendent shall designate in said notice. [L. 1909, c. 216, p. 324, § 19.]

§ 6644. Hearing.

Said superintendent shall also fix the time and place for the hearing of said contest, which date shall not be less than thirty nor more than sixty days from the date the notice is served on the party, association or corporation, which notice and returns thereof shall be made in the same manner as summons are served in civil actions in the circuit courts of this State. Superintendents of water divisions shall have power to adjourn hearings from time to time upon reasonable notice to all the parties interested, and to issue subpœnas and compel the attendance of witnesses to testify upon such hearings, which shall be served in the same manner as subpœnas issued out of the circuit courts of the State, and shall have the power to compel such witnesses so subpœnaed to testify and give evidence in said matter, and shall have the power to order the taking of depositions and to issue commissions therefor in such manner as the Board of Control by rule may provide, and said witnesses shall receive fees as in civil cases, the costs to be taxed in the same manner as are costs in suits in equity. The evidence in such proceedings shall be confined to the subjects enumerated in the notice of contest. [L. 1909, c. 216, p. 324, § 20; L. 1913, c. 86, p. 139. § 3.]

§ 6646. Evidence Transmitted.

Upon the expiration of the period for which the evidence is kept open for inspection, the evidence in the original hearing before the superintendent, and the evidence taken in all contests, shall be transmitted by the superintendent to the office of the Board of Control in person, or by registered mail. Such evidence shall thereupon be filed with the board. [L. 1909, c. 216, p. 325, § 22.]

§ 6647. Measurements of Streams and Ditches.

It shall be the duty of the State Engineer, or some qualified assistant, to proceed at the time specified in the notice to the parties on said stream to make an examination of said stream and the works diverting water therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals, and examination of the irrigated lands; and an approximate measurement of the lands irrigated or susceptible of irrigation from the various ditches and canals; and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested; which said observation and measurement shall be reduced to writing and made a matter of record in his office, and it shall be the duty of the State Engineer to make or cause to be made a map or plat on a scale of not less than one inch to the mile, showing with substantial accuracy the course of said stream, the location of each ditch or canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated or which are susceptible of irrigation from the ditches and canals already constructed. [L. 1909, c. 216, p. 325, § 23.]

§ 6648. Order Determining Water Rights.

As soon as practicable after the compilation of said date (data) and the filing of said evidence in the office of the Board of Control, the board shall make and cause to be entered of record in its office, findings of fact and an order of determination, determining and establishing the several rights to the waters of said stream. The original evidence filed with the board, and certified copies of the observations and measurements and maps of record in the State Engineer's office, in connection with such determination, as provided for by Section 6647, Lord's Oregon Laws, together with a copy of the order of determination and findings of the Board of Control, as the same appears of record in its office, shall be certified to by the secretary of the board, and filed with the clerk of the circuit court wherein the determination is to be heard. A

certified copy of such order of determination and findings shall be filed in every other county in which such stream, or any portion of a tributary, is situated, with the county clerk. Upon the filing of such evidence and order with the court, the board shall procure an order from said court, or any judge thereof, fixing the time at which the determination shall be heard in said court, which hearing shall be at least forty days subsequent to the date of such order. The clerk of said court shall, upon the making of such order, forthwith forward a certified copy thereof to the secretary of said board by registered mail, and said secretary shall immediately upon receipt thereof by registered mail, notify each claimant or owner who has appeared in the proceeding, of the time and place for such hearing. Service of such notice shall be deemed complete upon depositing such notice in the postoffice as registered mail, addressed to such claimant or owner at his postoffice address, as set forth in his proof, theretofore filed in the proceeding. Proof of such service shall be made and filed with the circuit court by such secretary as soon as possible after the mailing of such notices. The determination of the board shall be in full force and effect from the date of its entry in the records of the board, unless and until its operation shall be stayed by a stay bond as provided by this act. [L. 1909, c. 216, p. 326, § 24; L. 1913, c. 97, p. 161.]

§ 6649. Water Right Certificate.

Upon the final determination of the rights to the waters of any stream, it shall be the duty of the secretary of the Board of Control to issue to each person, association or corporation represented in such determination a certificate to be signed by the president of the Board of Control, and attested under seal by the secretary of said board, setting forth the name and postoffice address of the owner of the right; the priority of the date, extent and purpose of such right; and if such water be for irrigation purposes, a description of the legal subdivisions of land to which said water is appurtenant. Such certificate shall be transmitted by the president, or other member of the Board of Control, in person or by registered mail, to the county clerk of the county in which such right is located, and it shall be the duty of the county clerk upon receipt of the recording fee of $1.00 collected as hereinbefore provided, to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the certificates to the respective owners. [L. 1909, c. 216, p. 326, § 25.]

§ 6650. Court Procedure.

From and after the filing of the evidence and order of

determination in the circuit court, the proceedings shall be as nearly as may be like those in a suit in equity, except that any proceedings, including the entry of a decree, may be had in vacation with the same force and effect as in term time. At any time prior to the hearing provided for by Section 6648, Lord's Oregon Laws, as in this act amended, any party, or parties jointly interested, may file exceptions in writing to such findings and order of determination, or any part or parts thereof, which exceptions shall state with a reasonable degree of certainty the grounds of the exceptions and shall specify the particular paragraphs or parts of such findings and order excepted to. A copy of such exceptions, verified by such exceptor, or certified to by his attorney, shall be served upon each claimant, who was an adverse party to any contest or contests wherein such exceptor was a party in the proceedings, prior to such hearing. Such service shall be made by the exceptor or his attorney upon each of such adverse parties in person, or upon the attorney of such party, if he has appeared by attorney, or upon his agent; and if such adverse party is a nonresident of the county or State, such service may be made by mailing such copy to such adverse party by registered mail, addressed to his place of residence, as set forth in his proof filed in the proceeding. If no exceptions are filed the court shall on the day set for the hearing enter a decree affirming the determination of the board. If exceptions are filed upon the day set for the hearing the court shall fix a time not less than thirty days thereafter, unless for good cause shown such time be extended by the court, at which time a hearing will be had upon such exceptions. All parties may be heard upon the consideration of the exceptions, and the Board of Control may appear on behalf of the State of Oregon, either by a member of such board or by the Attorney General. The court may, if necessary, remand the case for such further testimony as it may direct, to be taken by the division superintendent, or by a referee appointed by the court for that purpose, as in a suit in equity in such circuit court, and upon the completion of such testimony and its report to the board, said board may be required to make a further determination. After final hearing the court shall enter a decree affirming or modifying the order of the Board of Control, and may assess such costs as it may deem just. Appeals may be taken to the Supreme Court from such decrees in the same manner and with the same effect as in other cases in equity, except that notice of appeal must be served and filed within sixty days from the entry of the decree. [L. 1909, c. 216, p. 326, § 26; L. 1913, c. 97, p. 161.]

§ 6651. Clerk Shall Transmit Transcript to Clerk of Board.

The clerk of the circuit court, immediately upon the entry of any decree by the circuit court or by the judge thereof, shall transmit a certified copy of said decree to the secretary of the Board of Control. The secretary shall immediately enter the same upon the records of such office and the State Engineer shall forthwith issue to the superintendent or superintendents of water divisions instructions in compliance with the said decree, and in execution thereof. [L. 1909, c. 216, p. 327, § 27.]

§ 6652. Distribution.

During the time the hearing of the order of the Board of Control is pending in the circuit court, and until a certified copy of the judgment, order or decree of the circuit court is transmitted to the Board of Control, the division of water from the stream involved in such appeal shall be made in accordance with the order of the board. [L. 1909, c. 216, p. 327, § 28.]

§ 6653. Stay Bond.

At any time after the determination of the board has been entered of record, the operation thereof may be stayed in whole or in part by any party by filing a bond in the circuit court wherein such determination is pending in such amount as the judge thereof may prescribe, conditioned that such party will pay all damages that may accrue by reason of such determination not being enforced. Immediately upon the filing and approval of such bond, the clerk of the circuit court shall transmit to the Board of Control a certified copy of such bond, which shall be recorded in the records by such board, and the State Engineer shall immediately give notice thereof to the superintendent of the proper water division. [L. 1909, c. 216, p. 327, § 29.]

§ 6654. Rehearing.

Within six months from the date of the decree of the circuit court determining the rights upon any stream, or if appealed within six months from the decision of the Supreme Court, the Board of Control, or any party interested, may apply to the circuit court for a rehearing upon grounds to be stated in the application. Thereupon, if in the discretion of the court it shall appear that there are good grounds for the rehearing, the circuit court, or judge thereof, shall make an order fixing a time and place when such application shall be heard. The clerk of the circuit court shall, at the expense of the petitioner, forthwith mail written notice of said application to the Board of Control and to every party interested, and state in such

notice the time and place when such application will be heard. [L. 1909, c. 216, p. 328, § 30.]

§ 6655. Conclusive, When.

The determination of the Board of Control as confirmed or modified as provided by this act in proceedings shall be conclusive as to all prior rights and the rights of all existing claimants upon the stream or other body of water lawfully embraced in the determination. [L. 1909, c. 216, p. 328, § 33.]

§ 6656. Duty of Water Right Claimants.

Whenever proceedings shall be instituted for the determination of the rights to the use of any water, it shall be the duty of all claimants interested therein to appear and submit proof of their respective claims, at the time and in the manner required by law; and any such claimant who shall fail to appear in such proceedings and submit proof of his claims shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in such proceedings, and shall be held to have forfeited all rights to the use of said water theretofore claimed by him. Any person, association or corporation interested in the water of any stream upon whom or which no service of notice shall have been had of the pendency of proceedings for the determination of the rights to the use of the water of said stream, and who or which shall have no actual knowledge or notice of the pendency of said proceedings, may at any time prior to the expiration of one year after the entry of the determination of the board, file a petition to intervene in said proceedings. Such petition shall contain, among other things, all matters required by this act, of claimants who have been duly served with notice of said proceedings and also a statement that the intervenor had no actual knowledge or notice of the pendency of said proceeding. Upon the filing of said petition in intervention, the petitioner shall be allowed to intervene upon such terms as may be equitable, and thereafter shall have all rights vouchsafed by this act to claimants who have been duly served. [L. 1909, c. 216, p. 328, § 34.]

§ 6657. Proof Open to Inspection—Who May Contest.

Whenever the rights to the waters of any stream have been determined as herein provided, and it shall appear by the records of such determination that it had not been at one and the same proceeding, then in such case the Board of Control may open to public inspection, all proofs or evidence of rights to the water, and the findings of the board in relation thereto in the manner provided in Section 6642; and any person, cor-

porations, or associations who may desire to contest the claims or rights of other persons, corporations, or associations, as set forth in the proofs or established by the board, shall proceed in the manner provided for in Sections 6643, 6644, and 6646; *provided*, that contests may not be entered into and shall not be maintained except between claimants who were not parties to the same adjudication proceedings in the original hearings. [L. 1909, c. 216, p. 329, § 35.]

(*c*) Distribution of Water.

§ 6615. Districts.

The Board of Control shall divide each water division into water districts, and said water districts to be so constituted as to secure the best protection to the claimants for water and the most economical supervision on the part of the State; said water districts shall not be created until a necessity therefor shall arise, but shall be created from time to time as the claims thereof from the streams of the State shall be determined. [L. 1909, c. 216, p. 329, § 36.]

§ 6616. Water Master, How Appointed.

There shall be appointed by the Board of Control, one water master for each water district, who shall be a resident of the district he is appointed for and who shall have been a resident of said district for one year immediately prior to the date of his appointment, shall be selected from persons recommended by the superintendent of the water division in which such water district is situated. Each water master shall hold his office until his successor is elected and shall have qualified, and the Board of Control shall, by like selection and appointment, fill all vacancies, which shall occur in the office of water master. [L. 1909, c. 216, p. 329, § 37.]

§ 6617. Duty of Water Master.

It shall be the duty of the said water masters to divide the water of the natural streams or other sources of supply of his district among the several ditches and reservoirs, taking water therefrom, according to the rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut and fastened, the head gates of ditches, and shall regulate or cause to be regulated, the controlling works of reservoirs, in time of scarcity of water, as may be necessary by reason of the rights existing from said streams of his district. The water master shall have authority to regulate the distribution of water among the various users under any partnership ditch or reservoir, where rights have been determined, in accordance with existing decrees. Whenever, in the pursuance of his

duties, the water master regulates a head gate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such head gate or controlling works, a written notice properly dated and signed, setting forth the facts that such head gate or controlling works has been properly regulated and is wholly under his control, and such notice shall be legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir. It shall be the duty of the district attorney to appear for, or on behalf of the division superintendent or any water master in any case which may arise in the pursuance of the official duties of any such officer within the jurisdiction of said district attorney. [L. 1909, c. 216, p. 330, § 38.]

Reference to determined rights in above section pertains only to such as are determined pursuant to the provisions of Sections 6635-6659, inclusive, and the Board of Control does not have jurisdiction to supervise the distribution of irrigation water taken from a stream before the rights and priorities of the parties had been determined under said act, and the water master was not entitled to compensation for acting in such unauthorized distribution. *Wattles* v. *Baker County*. 59 Or. 255.

§ 6618. Water Master Shall Prevent Waste.

Said water master shall, as near as may be, divide, regulate and control the use of the water of all streams within his district by such closing or partially closing of the head gates as will prevent the waste of water, or its use in excess of the volume to which the owner of the right is lawfully entitled, and any person who may be injured by the action of any water master, shall have the right to appeal to the circuit court for an injunction. Such injunction shall only be issued in case it can be shown at the hearing that the water master has failed to carry into effect the order of the Board of Control or decrees of the court determining the existing rights to the use of water, [L. 1909, c. 216, p. 333, § 39.]

§ 6619. Pay Of.

Each water master herein provided for shall receive compensation at the rate of $5.00 per day for each day he shall be actively employed in the duties of his office. Where the service may be improved by continuous employment and upon recommendation of the division superintendent and the approval of the county court of the county, or counties, in which said district is located by an order, or orders, made at regular term, or terms thereof, when sitting for the transaction of county business, he shall receive pay at the rate of $100.00 per month, in either case to be paid by the county in which the work is performed. Each water master shall keep a true and just acount of time spent by him in the duties of each county, respectively, in which his duties may extend, and he shall present

a true copy thereof, verified by oath, to the county court sitting for the transaction of county business of the county in which his work may be performed. And the county court shall, upon approval thereof by the superintendent of the water division allow and pay the same; *provided*, any water master may be suspended by an order of the county court of any county in which his district may lie in case said court shall find and enter an order to the effect that said water master is claiming more time than the public service requires, and during such suspension such water master shall receive no pay. [L. 1909, c. 216, p. 330, § 40.]

§ 6620. Employment of Assistants.

Said water master shall have power, in case of emergency, to employ suitable assistants to aid him in the discharge of his duties. Such assistants shall take the same oath as the water master, and shall obey his instructions, and each shall be entitled to such compensation as his services may demand and as the superintendent may recommend, not to exceed in any case, $4.00 per day for each day he is employed, such payments to be made upon certificates of the division superintendent in the same manner as provided for the payment of the water master. The term of service of such assistant water master may be terminated at any time by the division superintendent, and shall in no event continue after the emergency has ceased to exist. [L. 1909, c. 216, p. 331, § 41.]

§ 6621. Water Masters to Begin Work, When.

When arrangements are not made for employment of a water master at a monthly rate, as provided in Section 6619, the said water master shall begin his work upon written demand being made upon him therefor by one or more water users. Such written demand for his services shall be attached to his bill for services and forwarded with it to the county commissioners of the proper county. Where the said water master is employed by the month he shall begin work and terminate his services as the superintendent of his water division may direct. The division superintendent may, under any condition, call upon the water master for work within his district whenever the necessity therefor may in his judgment arise. [L. 1909, c. 216, p. 331, § 42.]

§ 6622. Interference with Head Gate—Penalty.

Any person who shall wilfully open, close, change or interfere with any lawfully established head gate or water box without authority, or who shall wilfully use water or conduct water into or through his ditch which has been lawfully denied

him by the water master or other competent authority, shall be deemed guilty of a misdemeanor. The possession or use of water when the same shall have been lawfully denied by the water master or other competent authority shall be *prima facie* evidence of the guilt of the person using it. [L. 1909, c. 216, p. 332, § 43.]

§ 6623. Power of Arrest.

The water master, or his assistants, within his district shall have power to arrest any person or persons violating any of the provisions of this act and turn them over to the sheriff or other competent police officer within the county; and immediately upon delivering any such person so arrested into the custody of the sheriff, it shall be the duty of the water master making such arrest to immediately, in writing and upon oath, make complaint before the proper justice of the peace against the person so arrested. [L. 1909, c. 216, p. 332, § 44.]

§ 6660. Head Gate, Maintenance Of.

The owner or owners of any ditch or canal shall maintain, to the satisfaction of the division superintendent of the division in which the irrigation works are located, a substantial head gate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water master; and such owners shall construct and maintain when required by the division superintendent, suitable measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water master in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct, and maintain, when required by the division superintendent, a measuring device of a plan to be approved by the State Engineer, below such reservoir, and a measuring device above such reservoir on each or every stream or source of supply discharging into such reservoir, for the purpose of assisting the water master or superintendent in determining the amount of water to which appropriators are entitled and thereafter diverting it for such appropriators' use. When it may be necessary for the protection of other water users, the division superintendent may require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such head gates, flumes, or measuring devices after ten days notice, the division superintendent may close such ditch, and the same shall not be opened or any water diverted from the source of supply, under

the penalties prescribed by law for the opening of head gates lawfully closed until the requirements of the division superintendent as to such head gate, flumes, or measuring device have been complied with, and if any owner or manager of a reservoir located across the bed of a natural stream shall neglect or refuse to put in such measuring device after ten days' notice by the division superintendent, such superintendent may open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties of the law for changing or interfering with head gates, until the requirements of the division superintendent as to such measuring devices are complied with. [L. 1909, c. 216, p. 335, § 55.]

§ 6661. Engineer's Authority to Inspect.

The State Engineer shall have authority to examine and inspect, during construction, any dam, authorized under the provisions of this chapter, or any ditch, canal, or other work, and at the time of such inspection, or thereafter, he shall notify the parties constructing such dam, or other works, of any addition or alteration which he considers necessary for the security of the work or the safety of any person or persons residing on or owning land in the vicinity of such works, or for the safety of their property. [L. 1909, c. 216, p. 336, §56.]

§ 6662. Inspection, When Required.

Should any person or persons residing on or owning land in the neighborhood of any irrigation works after completion, or in course of construction, apply to the State Engineer in writing desiring an inspection of such works, the State Engineer may order an inspection thereof. Before doing so he may require the applicant for such inspection to make a deposit of a sum of money sufficient to pay the expenses of an inspection, and in case the application appears to him not to have been justified, he may cause the whole or part of such expenses to be paid out of such deposit. In case the application appears to the State Engineer to have been justified, he may require the owner of the works to pay the whole or any part of the expenses of the inspection, and the same shall constitute a valid lien against the works, which may be enforced in the same manner as provided for the enforcement of mechanics' liens. [L. 1909, c. 216, p. 336, § 57.]

§ 6663. Duty of Water Master and Costs—How Payable.

Whenever the owner, manager or lessee of a reservoir, constructed under the provsions of this act, shall desire to use the bed of a stream, or other watercourse, for the purpose of carrying stored or imopunded water from the reservoir to the consumer thereof, he shall in writing, notify the water master

of the district in which the stored or impounded water is to be used, giving the date when it is proposed to discharge water from such reservoir, its volume, and the names of all persons and ditches entitled to its use. It shall then be the duty of such water master to close, or so adjust the headgates of all ditches from the stream or watercourse, not entitled to the use of such stored water, as will enable those having the right to secure the volume to which they are entitled. The water master shall keep a true and just account of the time spent by him in the discharge of his duties as defined in this section, and it shall be the duty of the county commissioners of the county wherein the expense is incurred, to present a bill of one-half the expense so incurred to the reservoir owner, manager or lessee, and if such owner, manager or lessee shall neglect for thirty days, after the presentation of such bill of costs, to pay the same, the said costs shall be made a charge upon said reservoir and shall be collected as delinquent taxes until the complete payment of such bill of costs has been made. [L. 1909, c. 216, p. 337, § 59.]

§ 6664. Joint Owners—Responsibility.

In all cases where ditches are owned by two or more persons and one or more of such persons shall fail or neglect to do a proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches, or to construct suitable head gates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work may, after having given ten days' written notice to such other owner or owners who have failed to perform such proportionate share of the work, necessary for the operation and maintenance of said ditch or ditches, perform such share of the work, and recover therefor from such person or persons in default the reasonable expense of such work. [L. 1909, c. 216, p. 338, § 61.]

§ 6665. Lien for Work Performed on Ditch.

Upon the failure of any co-owner to pay his proportionate share of such expense, as mentioned in the preceding section, within thirty days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county clerk of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons in default,

which said lien may be established and enforced in the same manner as provided by law for the enforcement of mechanics' liens. [L. 1909, c. 216, p. 338, § 62.]

§ 6666. Regulation of Ditches and Reservoirs.

Whenever any water users from any ditch or reservoir, either among themselves or with the owner thereof are unable to agree relative to the distribution or division of water through or from said ditch or reservoir, it shall be lawful for either such owner or such water user to apply to the water master of the district in which said ditch or reservoir is located, by written notice, setting forth such facts, asking the water master to take charge of such ditch or reservoir for the purpose of making a just division or distribution of water from the same to the parties entitled to use thereof. The circuit judge may also request the water master of the district to take charge of and enforce any decree relative to water rights made under the jurisdiction of said court. Upon receiving such request, the said water master shall take exclusive charge of said ditch or reservoir for the purpose of dividing or distributing the water therefrom in accordance with established rights and continuing the said work until the necessity therefor shall cease to exist. Said rights shall be deemed to have been established when the same have been determined by the Board of Control, by any decree of the circuit court of this State or by contract or other written agreement. The superintendent of a water division in which said ditch or reservoir is located may, at his discretion, order provision to be made for the pay of said water master by the parties interested for his services before such water master takes charge of such work. [L. 1909, c. 216, p. 338, § 63; L. 1913, c. 86, p. 140, § 4.]

§ 5. Rotation.

To bring about a more economical use of the available water supply, it shall be lawful for water users owning lands to which are attached water rights, to rotate in the use of the supply to which they may be collectively entitled, and whenever two or more water users shall notify the water master that they desire to use the water by rotation and shall present a written agreement as to the manner of such rotation, the water master shall distribute the water in accordance with such written agreement. [L. 1913, c. 86, p. 140.]

§ 6667. Injunctions.

In suits for injunction affecting the use of water from streams upon which the rights to water have been determined,

no restraining order shall be granted before hearing had after at least three days' notice thereof, served upon all persons defendant. All suits for injunction involving the use of water shall be heard, either in term time or during vacation, not later than fifteen days after issues joined, unless for good cause shown further time be allowed. [L. 1909, c. 216, p. 339, § 64.]

§ 6668. Water Appurtenant to Land for Irrigation Purposes.

All water used in this State for irrigation purposes shall remain appurtenant to the land upon which it is used; *provided*, that if for any reason it should at any time become impracticable to beneficially or economically use water for the irrigation of any land to which the water is appurtenant, said right may be severed from said land, and simultaneously transferred, and become appurtenant to other land, without losing priority of right theretofore established, if such change can be made without detriment to existing rights, on the approval of an application of the owner to the Board of Control. Before the approval of such transfer an inspection shall be made by the proper division superintendent, who shall submit his report to the Board of Control, whereupon, by order, the board shall approve or disapprove such transfer and prescribe the conditions therefor. Such order shall be subject to appeal as in this act provided. [L. 1909, c. 216, p. 339, § 65.]

See *Cookingham* v. *Lewis*, 114 Pac. 88.

§ 6669. Unlawful Use of Water and Waste.

The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right, shall be *prima facie* evidence of the guilt of the person using it. It shall also be a misdemeanor to use, store, or divert any water until after the issuance of permit to appropriate such waters. [L. 1909, c. 216, p. 340, § 66.]

§ 6670. Obstructing Works.

Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violation of the provisions of this section shall be a misdemeanor. [L. 1909, c. 216, p. 340, § 67.]

(*d*) GENERAL.

§ 6597. State Engineer.

As soon as possible after this act shall become effective a

State Engineer, technically qualified and experienced as an hydraulic engineer, shall be appointed by the Governor. He shall hold his office until January 1, 1911, unless sooner removed by the Governor for cause, and until his successor shall have been elected and shall have qualified. At the general election held in November, 1910, and every four years thereafter, there shall be elected a State Engineer by the voters of the State, whose term of office shall be four years, and until his successor is elected and qualified. He shall receive a salary of $2,400 per annum and actual necessary traveling expenses while away from his office in the discharge of official duties, payable as other State officers are paid. He shall perform such duties as are prescribed by law, and may employ assistants and purchase materials and supplies necessary for the proper conduct and maintenance of his department in pursuance of appropriations as made from time to time for such purposes. [L. 1909, c. 216, p. 320, § 8.]

§ 6601. Fees.

The following fees shall be collected by the State Engineer in advance, and be paid by him into the general fund of the State treasury on the last day of March, June, September, and December of each year:—

1. For examining an applicant for permit to appropriate water, $3.00.

2. For filing and recording permit to appropriate water for irrigation purposes, fifteen cents per acre for each acre to be irrigated up to and including one hundred acres, and five cents per acre for each acre in excess of one hundred and up to and including one thousand acres; and one cent per acre for each acre in excess of one thousand acres, or in case the application is for power purposes, twenty-five cents for each theoretical horsepower to be developed up to and including one hundred, and ten cents for each horsepower in excess of one hundred and up to and including one thousand, and five cents for each horsepower in excess of one thousand; or, in case the application is for any other purpose, including applications by municipalities for power purposes, $5.00 for filing and recording each permit.

3. For filing or recording any other water right instrument, $1.00 for the first hundred words and ten cents for each additional hundred words or fraction thereof.

4. For making copy of any document recorded or filed in his office, ten cents for each hundred words or fraction thereof; but where the amount exceeds $5.00, then only the actual cost in excess of that amount shall be charged.

5. For certifying to copies, documents, records, or maps, $1.00 for each certificate.

6. For blue print copy of any map or drawing, ten cents per square foot or fraction thereof. For such other work as may be required of his office, actual cost of the work. [L. 1905, c. 228, p. 404, § 9; L. 1909, c. 216, p. 334, § 52.]

Board of Control Shall Hereafter Be Designated "State Water Board."

Section 1. That the Board of Control, provided for and created by the provisions of Section 9, Chapter 261, General Laws of Oregon for 1909, the same being Section 6603, Lord's Oregon Laws, shall hereafter be known officially and entitled and designated as the "State Water Board," and shall, as heretofore, consist of the State Engineer and the superintendents of the water divisions within the State. Said board shall have the same powers and perform the same duties as prescribed by law for said Board of Control, and wherever the words "board," "the board," or "Board of Control," are used or appear in any of the provisions of said Chapter 261, General Laws of Oregon for 1909, or any act or acts amendatory thereof, or act or acts referring to said Board of Control, as created by said section, the same shall be deemed and construed to mean the "State Water Board," which is hereby made the official title of said board.

Section 2. Nothing in this act contained shall be deemed, construed or taken to be an amendment or modification of any of the provisions of Chapter 216, General Laws of Oregon for 1909, or acts amendatory thereof, except as to the official title of the said board created by the provisions of said Chapter 216. [L. 1913, c. 82, p. 136.]

§ 6603. Board of Control.

The State Engineer and the superintendents of the two water divisions shall constitute a Board of Control, which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the State, and of their appropriation, distribution, and diversion, and of the various officers connected therewith. The decisions of said board shall be subject to appeal to the circuit and supreme courts, which appeal shall be governed by the practice in suits in equity, unless otherwise provided herein. Said board shall have an office in the Capitol at Salem, and shall hold two regular meetings each year for the transaction of such business as may come before it, the first of said meetings to begin on the second Wednesday in April and the second on the third Wednesday in November. The State Engineer shall be *ex*

officio president of said board, and shall have a right to vote on all questions coming before it. A majority of said board shall constitute a quorum to transact business. The board shall have power to adjourn meetings from time to time, and to meet in special session at the call of the president, or of any two members. Notice of any special meeting must be given by registered mail to each member three days before the date thereof, but such meeting may be held at any time when all members of the board are present. [L. 1909, c. 216, p. 321, § 9.]

NOTE: Appeals to circuit court, within what time: Section 550, Lord's Oregon Laws.

§ 6604. Secretary and Other Assistants—Salary.

The Board of Control shall have authority, with power of removal, to appoint a secretary, who shall receive a salary of $1,200 per annum. He may be required by the board to furnish such bond as it may deem necessary, for the faithful performance of his duties. The duties of the secretary shall consist in keeping a full, true, and complete record of the transactions of the Board of Control, and he shall certify, under seal, all water right certificates made according to law. He shall perform such other duties as may be imposed by law or required of him by the board. Said board shall also have the power to employ such other assistants and purchase materials and supplies as may be necessary for the proper conduct of its business. [L. 1909. c. 216, p. 321, § 10.]

§ 6605. Authorized to Administer Oaths.

The members of the Board of Control may administer oaths in the performance of their official duties. [L. 1909, c. 216, p. 328, § 31.]

§ 6606. Fees.

The secretary of the Board of Control shall collect the following fees, which shall be paid in advance, and accounted for to the board, which fees shall be paid into the general fund of the State treasury by such board at the adjournment of each regular meeting; for making transcripts of the records of the Board of Control or of papers or documents filed with said board, $1.00 for the first folio and ten cents for each additional folio. For attaching certificate and seal of the board to each transcript, $1.00. [L. 1909, c. 216, p. 328, § 32.]

§ 6607. Appropriations.

There is hereby appropriated out of any moneys in the general fund of the State treasury not otherwise appropriated the sum of $10,000 annually, or so much thereof as may be necessary for the payment of the salaries and expenses incurred by

the Board of Control under the provisions of this act. There is hereby appropriated out of any moneys in the general fund of the State treasury not otherwise appropriated the sum of $5,000 annually, or so much thereof as may be necessary for the salary and expenses of the State Engineer, and the services of assistants, and expenses of the office and department of the State Engineer, which appropriation is in addition to the $5,000 annual appropriation heretofore made in Section 6590. All salaries and expenses incurred, and material and supplies furnished under the provisions of this act shall be paid at the same time and in the same manner as those of other officers of the State. [L. 1909, c. 216, p. 340, § 69.]

§ 6608. Attorney General and District Attorneys Advisors of State Engineer.

The Attorney General and the district or prosecuting attorney of the county in which legal questions arise, shall be the legal advisors of the State Engineer and of the Board of Control, and shall perform any and all legal duties necessary in connection with their work, without other compensation than their salaries as fixed by law. [L. 1909, c. 216, p. 338, § 60.]

§ 6609. Water Divisions.

The State of Oregon is hereby divided into two water divisions, as follows: Water Division No. 1 shall consist of all lands embraced within the following counties, to-wit: Benton, Clackamas, Columbia, Clatsop, Coos, Curry, Douglas, Josephine, Jackson, Klamath, Lake, Lane, Linn, Lincoln, Marion, Polk, Multnomah, Tillamook, Yamhill and Washington. Water Division No. 2 shall consist of all the lands embraced within the remaining counties of the State. [L. 1909, c. 216, p. 319, § 2.]

§ 6610. Division Superintendents; Appointments and Term Of.

There shall be one superintendent for each water division, who shall, immediately after this act becomes effective, be appointed by the Governor to serve until January 1, 1911, or until his successor is appointed or elected and shall have qualified, and who shall be a resident of the water division for which he is appointed. At the general election in 1910, and every four years thereafter there shall be elected by the voters of the counties of the first and second water divisions of the State a division superintendent, each of whom shall hold office for the term of four years, or until his successor is elected and qualified. Each of said water superintendents shall have knowledge and experience relative to the irrigation law and its administration, and measurement of flowing water, evaporation, seepage, and common alkalies, drainage and the hydro-

graphic features of the water division in which the candidate may reside. [L. 1909, c. 216, p. 319, § 3]

§ 6611. Duties.

Said division superintendent shall have general control over the water masters of the several districts within his division. He shall execute the laws relative to the distribution of water, and perform such other functions as may be assigned to him. He shall have authority to make such reasonable regulations to secure the equal and fair distribution of water in accordance with the determined rights as may be needed in his division. Such regulations shall not be inconsistent with the laws of the State. [L. 1909, c. 216, p. 319, § 4.]

§ 6612. Appeal From.

Any person, association, or corporation who may deem himself, or itself, aggrieved by any such order or regulation of such division superintendent shall have the right to appeal from the same to the Board of Control by filing with it a copy of the order or regulation complained of and a statement of the manner in which the same injuriously affects the petitioner's interest. The board shall, after due notice, hear whatever testimony may be adduced by the petitioner, either orally or by affidavit, and shall have the power to suspend, amend or affirm the order complained of. [L. 1909, c. 216, p. 320, § 5.]

§ 6613. Water Division Superintendent and Compensation Of.

Each division superintendent shall receive a salary of $2,400 per annum, in full compensation for all his services, and shall in addition thereto be paid his actual traveling expenses when called away from home in the performance of his duties. Such salary and expenses shall be paid at the same time and in the same manner as those of other State officers. Such division superintendents shall not engage in any other business. [L. 1909, c. 216, p. 320, § 6.]

§ 6614. Oath and Bond.

Before entering upon the duties of his office, each division superintendent shall take and subscribe an oath faithfully to perform the duties of his office, and file with the Secretary of State said oath and his official bond in the penal sum of $5,000, with surety, or sureties, to be approved by the Governor, and conditions for the faithful discharge of the duties of his office. [L. 1909, c. 216, p. 320, § 7.]

§ 6595. Vested Rights Preserved.

1. Nothing in this act contained shall impair the vested

right of any person, association or corporation to the use of water.

2. Actual application of water to beneficial use prior to the passage of this act by or under authority of any riparian proprietor, or by or under authority of his or its predecessors in interest, shall be deemed to create in such riparian proprietor a vested right to the extent of the actual application to beneficial use; *provided,* such use has not been abandoned for a continuous period of two years.

3. And where any riparian proprietor, or under authority of any riparian proprietor or his or its predecessor in interest, any person or corporation shall, at the time this act is filed in the office of the Secretary of State, be engaged in good faith in the construction of works for the application of water to a beneficial use, the right to take and use such water shall be deemed vested in such riparian proprietor; *provided,* such works shall be completed and said water devoted to a beneficial use within a reasonable time after the passage of this act. The Board of Control, in the manner hereinafter provided, shall have power and authority to determine the time within which such water shall be devoted to a beneficial use. The right to water shall be limited to the quantity actually applied to a beneficial use within the time so fixed by the Board of Control.

4. Nor shall anything in this act contained affect relative priorities to the use of water between or among parties to any decree of the courts rendered in causes determined or pending prior to the taking effect of this act.

5. Nor shall the right of any person, association or corporation, to take and use water be impaired or affected by any of the provisions of this act where appropriations have been initiated prior to the filing of this act in the office of the Secretary of State, and such appropriators, their heirs, successors or assigns, shall, in good faith and in compliance with laws existing at the time of filing this act in the office of the Secretary of State, commence the construction of works for the application of the water so appropriated to a beneficial use, and thereafter prosecute such work diligently and continuously to completion, but all such rights shall be adjudicated in the manner provided in this act.

6. The Board of Control shall have authority, and shall for good cause, shown upon the application of any appropriator, or user of water under an appropriation of water made prior to the passage of this act, or in the cases mentioned in subdivisions 3 and 5 of this section, where actual construction work has been commenced prior to said time or within the

time provided in law existing at the time of filing this act in the office of the Secretary of State, to prescribe the time within which the full amount of the water appropriated shall be applied to a beneficial use, and in determining said time shall grant a reasonable time after the construction of the works or canal or ditch, used for the diversion of the water, and in doing so shall take into consideration the cost of the appropriation and application of such water to a beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demands therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment. Upon making such order the Board of Control shall direct the State Engineer to issue a certificate showing such determination. For good cause shown the Board of Control may extend the time by granting further certificates.

7. And where appropriations of water heretofore attempted have been undertaken in good faith, and the work of construction or improvement thereunder has been in good faith commenced and diligently prosecuted, such appropriations shall not be set aside or avoided, in proceedings under this act, because of any irregularity or insufficiency of the notice by law, or in the manner of posting, recording, or publication thereof.

8. All rights granted or declared by this act shall be adjudicated and determined in the manner and by the tribunals as provided in this act. This act shall not be held to bestow upon any person, association or corporation, any riparian rights where no such rights existed prior to the time this act takes effect. [L. 1909, c. 216, p. 340, § 70]

A riparian owner of land on a stream in Oregon, a part of which is irrigated by the overflow water each spring and produces annual crops of grass, used by him for pasturage and hay, and which land without such irrigation would be valueless for practical uses, has a vested right for such water of which he cannot be deprived by another above him by an appropriation made under the 1909 act. (*Eastern Oregon Land Co.* v. *Willow River Land & Irrigation Co.*, 201 Fed. 203.)

§ 6671. Penalty for Misdemeanors Under This Act.

All violations of the provisions of this act, declared herein to be misdemeanors, shall be punished by a fine not exceeding $250.00 nor less than $10.00, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [L. 1909, c. 216, p. 340, § 68.]

§ 6672. Portland Water Supply.

The exclusive right to the use of the waters of Bull Run and Little Sandy rivers is hereby granted to the city of Portland, and all rights to the waters of the lakes, rivers and streams of

this State heretofore acquired for the purposes of municipal water supply are hereby confirmed, and no rights which shall be acquired under this act shall impair the rights of any municipal corporation to waters heretofore taken. The Board of Control shall reject, or grant, subject to municipal use, all applications where, in its judgment, the appropriation of the waters applied for impair a municipal water supply. It shall be the duty of municipal corporations of the State, on request of the State Engineer, to furnish to him a statement of the amount and source of the municipal water supply, with probable increase or extension of the same; *provided*, that this act shall not be deemed or held to and shall not impair the rights of any person, association or corporation who may, at and prior to the time this act is filed in the office of the Secretary of State, have any vested right to or valid appropriation or *bona fide* notice of appropriation of the waters of either the Bull Run or the Little Sandy river, under laws heretofore in effect or under any valid contract or deed of conveyance heretofore made with or by the city of Portland. [L. 1909, c. 216, p. 342, § 71.]

PART II.

GENERAL

(a) License Fees for Power Development.

§ 6675. Water Belongs to Public.

All water within the State from all sources of water supply belong to the public. [L. 1909, c. 221, p. 370, § 1.]

See notes to §§ 6594, 6624, *post.*

§ 6576. Annual Charge for Water Power.

Every person, firm, or corporation except municipal corporations (hereinafter called the appropriator), who shall appropriate water after the passage of this act, for the purpose of applying the same to the development of power, shall during the life of such appropriation as fixed herein pay to the State of Oregon not less than twenty-five cents or more than $2.00 per annum in advance, on or before the second day of January of each year, for each and every horsepower represented by the said appropriation. The amount of the payment shall be determined by the Board of Control and adjusted from time to time, based upon the percentage of power appropriated which is put to beneficial use. For the purpose of this act, a horsepower is hereby defined to be 550 pounds of water per second of time for each foot of available fall. [L. 1909, c. 221, p. 370, § 2.]

§ 6577. Payment, How and to Whom Made.

The appropriator shall pay to the Board of Control the fees required by Section 6576, proportionate to the remainder of the current year, and no appropriation of water for power purposes shall be deemed complete until such payment of fees is made. Immediately upon the receipt of such fees the Board of Control shall pay them over to the State Treasurer, taking his receipt therefor, who shall place the same in the general fund of the State treasury. On or before the second day of January of each year thereafter, every appropriator of water for power purposes shall forward to the Board of Control the fees provided for in Section 6576. [L. 1909, c. 221, p. 370, § 3.]

§ 6578. Term—Forfeiture.

Upon the completion of the appropriation of water for power purposes, as now or hereafter provided by law, and compliance with the provisions of this act, the appropriator thereof shall own and enjoy all of the uses thereof so long as he pays the annual fees therefor, herein required, for a term not exceeding forty years from the date of appropriation

and shall have a preference right to re-appropriate such water under such conditions as may be prescribed by law at the expiration of such term of years, provided all fees have been paid. If any appropriator shall fail to pay any annual fee, or shall fail or refuse to renew the appropriation at its expiration, the State shall have a preference lien therefor prior to all other liens or claims, except for taxes, upon the improvements of the appropriator for developing and applying such appropriation of water and the real estate upon which the same are located, and upon notice from the Board of Control, the Attorney General shall proceed to foreclose the lien and collect any unpaid fees in the same manner as other liens on real property are foreclosed, and the water shall be again subject to appropriation. [L. 1909, c. 221, p. 371, § 4.]

§ 6579. Appeal by User From Decision of Board of Control.

Any person, firm or corporation who believes himself or itself injured in any material right by any decision of the Board of Control shall have the right of appeal from such decision to the circuit court for the county in which the proposed appropriation of water is situated. [L. 1909, c. 221, p. 371, § 5.]

Power Appropriations Initiated Prior to May 22, 1909.

Section 1. Every person, firm, corporation or association hereinafter called "claimant," claiming the right to the use of water for power development where said water was applied to the development or generation of power, and the power generated thereby prior to the 22nd day of May, 1909, shall on or before the 1st day of January, 1912, and on or before the 1st day of January of each year thereafter, pay to the State of Oregon in advance an annual license fee based upon the theoretical water horsepower claimed under each and every separate claim to water, graduated as follows, to-wit: Ten cents for each and every theoretical water horsepower up to 100, inclusive; five cents for each and every theoretical water horsepower in excess of 100 and up to and including 1,000; and one cent for each and every theoretical water horsepower in excess of 1,000; *provided, however,* upon filing the statement as hereinafter provided, the United States, or the State, or any municipal corporation, claiming the right to the use of water to any extent for the generation of power, or any other claimant to the right to use water for the generation of 25 theoretical water horsepower, or less, shall be exempted from the payment of all fees herein provided.

Section 2. The fees herein provided shall be paid to the State Engineer in advance, and shall be accompanied by a

written statement showing the extent of such claim. Said statement shall set forth the name and address of the claimant; the name of the stream from which the water is appropriated or claimed for power development; a description of the forty acres, or smallest legal subdivision in which the point of diversion and point of return are located; the date of the right as claimed; the maximum amount of water claimed expressed in cubic feet per second of time; the total average fall utilized under such claim; the manner of developing power, and the use to which the power is applied. If the regular flow is supplemented by water stored in a reservoir, the location of such reservoir, its capacity in acre-feet and the stream from which it is filled and fed, should be given, also the date of the right as claimed, for storage purposes.

Should any claimant fail or neglect to file such statement within the time specified, or fail or neglect to pay such fees within the time specified, the fees due and payable shall be the amount specified in Section 1 of this act increased twenty-five per cent, and the State shall have a preference lien therefor, together with interest at the rate of ten per cent per annum from date of delinquency, upon the property of the claimant used, or necessary for use, in the development of the right or claim, together with any improvements erected thereon for such development, and upon notice from the State Engineer, the Attorney General shall proceed to foreclose the lien and collect the amount due, as herein provided, in the same manner as other liens on real property are foreclosed.

Section 3. The filing of a claim to water in excess of the amount to which the claimant is legally entitled shall not operate to vest in such claimant any right to the use of such excess water, nor shall the payment of the annual license fees, provided for herein, operate to vest in any claimant any right to the use of such water beyond the amount to which claimant is legally entitled. The filing of any such claim to water shall be conclusive evidence as to the abandonment by the claimant of all rights to water for power purposes in excess of the claim as filed.

Section 4. The amount of theoretical water horsepower upon which fees shall be paid under the provisions of this act shall be computed by multiplying the maximum amount of water claimed, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and dividing the product by 8.8. [L. 1911, c. 236, p. 418.]

§ 6551. Use of Water for Mining and Electrical Power a Public One.

The use of the water of the lakes and running streams of the State of Oregon for the purpose of developing the mineral

resources of the State and to furnish electrical power for all purposes, is declared to be a public beneficial use and a public necessity, and the right to divert unappropriated waters of any such lakes or streams for such public and beneficial use is hereby granted; *provided,* that the provisions of this act do not apply or extend to that certain stream situated in Multnomah County, Oregon, known as Multnomah Creek, and sometimes called Coon Creek, which stream forms Multnomah Falls, but said stream and the flow of water therein shall not be diverted or interrupted for any purposes whatsoever. [L. 1899, p. 172, § 1; B. & C. § 5022; L. 1907, c. 145, p. 288.]

See notes to §§ 6594, 6624.

This section and § 6552, authorize corporations engaged in furnishing electrical power for all purposes to use the surplus water of the streams of the State for water power, and to condemn the rights of riparian proprietors and also rights of way for ditches. Section 6555 declares that when the point of diversion shall have been selected the appropriator shall post a certain notice thereat, and § 6556 requires the filing for record within ten days thereafter of a similar notice, and a map showing the general route of the ditch. Section 6557 provides that when such corporation shall have acquired the right to appropriate water in the manner provided, it may condemn lands necessary for the right of way for its ditch; and it was held that where a corporation organized for furnishing electrical power for all purposes has selected a point for the diversion of the water of a stream, and has surveyed and located the line of its ditch, and has posted the required notice, and filed the notice and map, its right to appropriate the water is thereby acquired. Thereafter the corporation may maintain an action of condemnation without showing that it is the sole owner of the banks of the stream in question from the point of the proposed diversion to the mouth thereof, or that it has secured from the riparian proprietors below the proposed point of diversion the right to divert the surplus water in such stream: *Grande Ronde Elec. Co.* v. *Drake,* 46 Or. 243, 78 Pac. 1031.

The provision in § 18, Art. 1, Const. Or., that private property shall not be taken for public use without just compensation first assessed and tendered, impliedly prohibits the taking of private property for private use, even though just compensation be made therefor: *Grande Ronde Elec. Co.* v. *Drake, supra.*

The necessity of exercising the right of eminent domain in general classes of cases is a legislative question, but whether the use in a particular instance is public or private, and the extent of the use necessary, are to be determined by the courts as questions of fact; for example, the legislature may determine that corporations furnishing electricity for sale shall be allowed to condemn private property for their use, yet as to the nature of the use to which a particular piece of property is to be put and the extent of the needs of the condemner, there may be a question, which the courts must decide: *Grande Ronae Elec. Co.* v. *Drake, supra.*

Sections 6551-6556 declare the use of water of the streams of the State for furnishing electric power for all purposes a public use and authorize corporations created for such purpose to use such streams therefor, so that the use may not materially impair the rights of prior appropriators, on the corporation complying with certain prescribed conditions. Section 6557 declares that when such corporation shall have acquired the right to appropriate the water "in the manner hereinbefore provided it may proceed to condemn lands and premises necessary for right of way for its ditch"; and §§ 6558 and 6559 authorize such corporations, when authorized as so provided, to appropriate water and construct and maintain a ditch, to maintain an action to condemn a right of way for such ditch, and also for the condemnation and appropriation of the right to the flow of the water in any stream from which it is proposed to divert water below the point of diversion vested in riparian proprietors; and it was held that a corporation, having so acquired the right to appropriate water, may maintain an action either to condemn land for a ditch, or to condemn the right to have the water flow in the channel of the stream through the premises of a riparian proprietor, or it may sue for both purposes in one action when both rights are vested in the same defendant: *Grande Ronde Elec. Co.* v. *Drake, supra.*

Also bearing on this point as applies to cities or towns, see *McMinnville* v. *Howenstine,* 56 Or. 451, 109 Pac. 81.

(*b*) CONDEMNATION—RIGHTS OF WAY—EMINENT DOMAIN.

§ 6596. Eminent Domain.

Section 1. The United States, the State, or any person, firm or corporation, shall have the right of way across and upon public, private and corporate lands or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels or others means of securing, storing and conveying water for irrigation or for drainage, or any other beneficial purpose, upon payment of just compensation therefor. But such right of way shall in all cases be so constructed, obtained, located and exercised in a manner consistent with proper and economical engineering construction, so as not to unnecessarily impair practical use of any other right of way, highway, or public or private road, nor to unnecessarily injure any public or private property. Such right may be acquired in the manner provided by law for the taking of private property for public use.

Section 2. When the United States, the State, or any person, firm or corporation desires to convey water for irrigation, drainage or for any other beneficial purpose, and there is a canal or ditch already constructed that can be enlarged to convey the required quantity of water, then the United States, the State, or any such person, firm or corporation, or the owner or owners of the land through which a new canal or ditch would have to be constructed to convey the quantity of water necessary, shall have the right to enlarge said canal or ditch already constructed, by compensating the owner of the canal or ditch to be enlarged for the damages, if any, caused by said enlargement; *provided,* that said enlargement may be made at any time between the 1st day of October and the 1st day of March, but not any other time, unless upon agreement in writing with the owner or owners of said canal or ditch. [L. 1911, c. 238, p. 421.]

§ 3302. Municipality of Adjoining State May Condemn Lands to Protect Water Supply.

That any municipal corporation of any state adjoining the State of Oregon may acquire title to any land or water right within the State of Oregon, by purchase or condemnation, which lies within any watershed from which said municipal (corporation) obtains or desires to obtain its water supply. [L. 1909, c. 182, p. 256, § 1.]

Municipal Water Systems—Eminent Domain.

Incorporated cities and towns having a population of over

3,000, when the power to do so is conferred by or contained in their charter or act of incorporation, are hereby authorized to build, own, operate and maintain water works, water systems, railways and railroads, electric light and power plants, within and without the boundaries of said corporation, for the benefit and use of the inhabitants thereof, and for profit, and to that end may in connection with their water systems sell and dispose of water for irrigation and other purposes to people residing without the boundaries of such municipal corporation, and may build, acquire, own and operate railways operated by steam, electric or other power within and without the boundaries of such municipal corporation and running from said municipal corporation to other towns, cities and points without the boundaries of the municipal corporation, and to that end may acquire rights of way, easements, real property within and without its boundaries, for any of such purposes. For the purpose of exercising such powers, such cities and towns are conferred with the power and authority to bring actions for the condemnation or taking of private property for public use in the same manner as private corporations are now authorized or permitted to do under the laws of this State. [L. 1913, c. 283, p. 541.]

§ 6527. Right to Enter on Land to Survey and Locate Line.

Any person, firm or corporation may enter upon any land for the purpose of locating a point of diversion of the water intended to be appropriated and upon any land lying between such point and the lower terminus of its proposed ditch or canal or flume, for the purpose of examining the same and of locating and surveying the line of such ditch or canal or flume, together with the lines of necessary distributing ditches and feeders, and to locate and determine the site for reservoirs for storing water. [L. 1891, p. 53, § 3; L. 1913, c. 86, p. 138, § 1.]

§ 6638. Corporations May Go on Land to Survey Line.

A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal, bridge, or of any ditch or flume for the conducting of water for irrigation or domestic purposes, or for the purpose of selling the same to the public for general purposes for public use, or for conducting water by means of pipe laid upon or under the surface of the ground; or for the manufacture, use, or sale of electricity for lighting or power purposes, or desiring to use such electrical power in the operation of any railway, shall have a right to enter upon any land between the termini thereof, or elsewhere, for the purpose of examining, locating, or surveying the line of such railway, macadamized road, plank road, clay road,

canal, bridge, ditch, flume, or pipe line, for the purpose of surveying or measuring any lands or rights appurtenant thereto needed for railway, power, or other such purposes, doing no unnecessary damage thereby. [L. 1862; L. 1870, p. 26, § 1; L. 1907, c. 147, p. 289; L. 1909, c. 75, p. 133, § 2.]

The right of eminent domain is one that can be exercised only by legislative authority, and for a use beneficial to the public, and whether a proposed use is a public one is for the courts to determine as a question of fact: *Bridal Veil Lum. Co.* v. *Johnson,* 30 Or. 210, 46 Pac. 790.

§ 6639. Land May Be Appropriated, to What Extent and for What Purposes.

Any corporation mentioned in Section 6838 may appropriate so much of said land as may be necessary for the line of such railway, macadamized road, plank road, clay road, canal, bridge, ditch, flume or pipe line, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toolhouses, workshops, materials for construction, timber excepted, a right through such adjacent land to enable such corporation to construct and repair its railway, macadamized road, plank road, clay road, canal, bridge, ditch, flume, or pipe line, and to make proper drains; and any corporation organized in whole or in part for the construction of a canal for navigating or manufacturing purposes or of any ditch or flume for the purpose of conveying water for irrigating, domestic, or stock purposes may appropriate such waterways, water rights or privileges, or otherwise acquire by purchase, lease, or otherwise, established water rights or privileges, or those initiated by performing any acts herein or otherwise required, provided, or permitted by law, as may be necessary or convenient for the purpose of supplying, operating, constructing or maintaining the same; and in case of railway, sufficient quantity of such land, in addition to that above specified in this section, for the necessary sidetracks, spur tracks, and laterals reasonably necessary for manufacturing establishments, also for depot and water stations, cuttings, and embankments, and for the proper construction, security, and convenient operation of its road; and such railway company shall have the right to cut down any standing timber in danger of falling upon its road, making compensation therefor as provided in this act, for lands taken for the use of the corporation, and shall have the right, and may appropriate the right, to conduct water thereto by aqueducts; and any such railway corporation may cross, intersect, join, and unite its railway with any other railways at any point in its route, and upon the grounds of such other railway corporation, and make the necessary turnouts, sidings, switches, and other conveniences in furtherance of the object of its connection and may appropriate to make such crossings; the railway which is

or may be intersected by new railways, may unite with the owners of such new railways in forming such intersection and connection, and grant the facilities aforesaid; but in case of water pipes, except in incorporated towns and cities, the corporation may, so far as may be necessary for the laying and keeping in repair its water pipes, appropriate the use of so much of such lands as may be necessary, and may make whatever cuts and excavation (or cuts) as soon as practicable after making the same, but no appropriation of private property shall be made until compensation be made therefor to the owner thereof, irrespective of any increased value thereof, by reason of the proposed improvement by such corporation, in the manner hereinafter provided. And any such corporation mentioned in Section 6838 may also appropriate and condemn the rights of riparian proprietors in any lake or stream, to enable such corporation to develop, manufacture, or furnish electrical energy for lighting or power purposes, for the operation of any railway in this State, or to manufacture, furnish, or sell electrical energy for lighting or power purposes to any city or town in this State, or to any public service corporation doing business therein; and any such corporation mentioned in said Section 6838 shall have the right to condemn lands for the sites of reservoirs for storing water for future use, and for rights of way for feeders, carrying water to such reservoirs, and for ditches, canals, flumes, or pipe lines carrying the same, away, and such right of condemnation shall be exercised in the same manner as property is now condemned and appropriated for railway purposes. [L. 1862; L. 1870, p. 26, § 2; L. 1878, p. 104, § 1; L. 1885, p. 107, § 1; L. 1907, c. 147, p. 289; L. 1909, c. 75, p. 133, § 3.]

§ 6840. Corporation May Change Location, Etc., of Road.

Any corporation may change the grade or location of its road, canal, or pipes, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds for foundation, or for other like reasonable causes, and for the accomplishment of such change shall have the same right to enter upon, examine, survey, and appropriate the necessary lands and materials as in the original location and construction of such road, canal, or water pipes. [L. 1862; L. 1870, p. 27, § 3.]

§ 6857. Mining and Other Private Corporations May Condemn Land.

Any corporation organized for the purpose of opening or operating any gold, silver, or copper vein or lode, or any coal or other mine; or any marble, stone, or other quarry, or for cut-

ting or transporting timber, lumber, or cordwood, or for the manufacture of lumber, shall have the right to construct and operate railroads, skid roads, tramways, chutes, and flumes between such points as may be indicated in their articles of incorporation, and shall have a right to enter upon any land between such points for the purpose of examining, locating, and surveying the line of such railroads, skid roads, tramways, chutes, and flumes, doing no unnecessary damage thereby, and such corporations shall have power to appropriate so much of said land as may be necessary for the same, not exceeding sixty feet in width, and may maintain an action for the appropriation thereof in the manner and form as by law provided by any railway, macadamized road, plank road, clay road, canal, or bridge, and with like effect. [L. 1895, p. 6, § 1.]

§ 6858. Private Corporations Deemed for Public Benefit.

Any such railroads, skid roads, tramways, chutes, flumes, shall be deemed to be for public benefit, and any such railroad so constructed and operated shall afford to all persons equal facilities for the transportation of freight upon payment or tender of reasonable compensation therefor, but said railway shall not be required to carry passengers, and any such skidway, tramway, chute or flume shall afford to all persons equal facilities in the use thereof for the purpose to which they are adapted, upon tender or payment of the reasonable compensation for such use. [L. 1895, p. 6, § 2; L. 1907, c. 147, p. 290, § 3.]

§ 6871. Private Property May Be Appropriated to Public Use.

Whenever the law authorizes private real property to be appropriated to public use, the same may be entered upon, examined, surveyed, and selected in the mode prescribed by the statute giving such authority, and thereafter the State, county, or other municipal or public corporation therein, seeking and authorized to make such appropriation, may proceed in the mode in this title prescribed, to have such property appropriated and the compensation therefor determined and paid, and not otherwise; except that the compensation in the case of such State, county, municipal, or public corporation is paid by the deposit in court of an order duly drawn upon the treasurer thereof for the amount of such compensation. [L. 1862.]

§ 6872. Condemnation of Land, Water Rights, Etc., for Use of State—Proceedings.

Whenever it is necessary that the State of Oregon shall require any real property, water, water courses, and water and riparian rights, or any right or interest therein, for any public

use, the necessity for such acquisition to be decided and declared in the first instances by the State board of commissioners, trustees, or other State board having direction of the State institution or department for which the real property, water, water courses, or water and riparian rights or interest therein is desired, or by the State Land Board, if there be no State board for the department or institution for which the same is sought to be acquired, if the owner thereof and said board having direction of the State institution or department for which the same is sought to be acquired, or the State Land Board if there be no such other board, cannot agree upon the price to be paid for the amount of, or interest in his said real property, water, water courses, or water and riparian rights required for such public use, and the damages for the taking thereof, said board of commissioners, trustees, or other State board, or State Land Board, may and is hereby authorized to request the Attorney General to, and he shall when so requested, commence and prosecute in any court of competent jurisdiction, in the name of the State of Oregon, any necessary or appropriate suit, action or proceeding for the condemnation of said amount of or interest in said real property, water, water courses, water and riparian rights so required for said purposes, and for the assessment of the damages for the taking thereof; and the district attorney of the judicial district in which the property to be condemned lies shall, when requested by any of said boards or officers, commence and prosecute any such suit, action or proceeding in the circuit court of such district, or aid the Attorney General in so doing in any manner requested by him. The procedure in said suit, action or proceeding shall be, as far as applicable, the procedure provided for in and by the laws of this State for the condemnation of land or rights of way by public corporations or *quasi* public corporations for public use or for corporate purposes; *provided* nothing in this act shall be construed to require the State of Oregon to make or tender compensation prior to condemning and taking possession of such lands or property. [L. 1905, c. 45, p. 106, § 1.]

§ 6873. Expense of Proceedings and Value of Property, How Paid.

The expenses of such condemnation proceedings and the value of the real property, water, water courses, and water and riparian rights or interest therein, and the damages for the taking thereof, shall be paid out of the funds provided for the department or institution for which the real property, water, water courses, and water and riparian rights or interest therein are so acquired, in the same manner as other expenses for like purposes of such department or institution are paid, and if no

funds have been provided out of which the same can be paid, payment shall be made out of any funds in the treasury not otherwise appropriated, and the Secretary of State is hereby authorized to draw his warrant on the Treasurer therefor. [L. 1905, c. 45, p. 107, § 2]

By an act of the Legislative Assembly of the State of Oregon, filed in the office of the Secretary of State February 18, 1911, Section 6874 of Lord's Oregon Laws was amended to read as follows:

Section 6874. Any incorporated city or town of this State, or the proper department, board or commission of any such city or town shall have the right to appropriate: (1) Any private real property, water, water courses, and water and riparian rights to any public or municipal use or uses, or for the general use and benefit of the people of said city or town, or to protect said city or town from overflow by freshets; (2) any real property of any private corporation or private person devoted to a public use, for the purpose of any public or municipal dock, wharf, pier, slip, basin, or other structure of a like kind.

Any such property or rights may be entered upon, surveyed, examined and selected for the purpose of laying out, establishing or constructing any ditch, drain, dike, canal, flume, sewer, reservoir, septic tank, filter bed, sewer farm [form] or purifying plant, dock, wharf, pier, slip, basin, or other similar structure for municipal purposes, in the mode described by this chapter and the statutes of this State for the appropriation of land for corporate purposes; and such appropriation may extend beyond the corporate limits of said city or town, to or along and including any adjacent or neighboring lake, river, slough, water course, spring, stream or site; and after the selection of such rights and property in such manner as the council or the department, board or commission having jurisdiction in the premises may provide, the city or town or proper department, board or commission of any such city or town, seeking to make such appropriation may proceed in the manner prescribed in this act to have such property appropriated, and the compensation therefor determined and paid and not otherwise, except that the compensation in case of any such city or town is to be paid by such city or town, or the proper department, board or commission of any such city or town by a deposit in court of any order duly drawn upon the treasurer thereof for the amount of such compensation. [L. 1887, p 91, § 1; L. 1891, p. 145, § 1; H. § 3271; B. & C. § 5108; L. 1905, c. 15, p. 77; L. 1909, c. 171, p. 244; L. 1911, c. 104, p. 148.]

By an act of the Legislative Assembly of the State of Oregon, filed in the office of the Secretary of State, February 21, 1911, Section 6874 of Lord's Oregon Laws was amended to read as follows:

Section 6874. Any incorporated city or town of this State shall have the right to appropriate any private real property, water, water courses, and water and riparian rights to any public or municipal use or uses, or for the general use and benefit of the people of said city or town, or to protect said city or town from overflow by freshets, and any such property or rights may be entered upon, surveyed, examined and selected for the purpose of constructing any ditch, drain, dike, canal, flume, sewer, reservoir, septic tank, filter bed, sewer form or purifying plant, or laying or constructing and maintaining any pipe, sewer, drain, aqueduct, dike, canal, flume, reservoir, septic tank, filter bed, sewer form, or purifying plant, or other plant, building or system for municipal uses, in the mode prescribed by this chapter and the statutes of this State for the appropriation of land for corporate purposes; and such appropriation may extend beyond the corporate limits of said town or city to or along and including any adjacent or neighboring lake, spring, stream, or site, and after the selection of such rights and property in such manner as the council may provide, the city or town seeking to make such appropriation may proceed in the manner prescribed in this act to have such property appropriated, and the compensation therefor determined and paid, and not otherwise, except that the compensation in the case of such city or town shall be paid by a deposit in court of an order duly drawn upon the treasurer thereof for the amount of such compensation. [L. 1887, p. 91, § 1; L. 1891, p. 145, § 1; H. § 3271; B. & C. § 5108; L. 1905, c. 15, p. 77; L. 1909, c. 171, p. 244; L. 1911, c. 145, p. 197.]

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§ 3940. Rights of Way for Water Ditches and Pipes.

A right of way for the construction of a water ditch to be used for irrigation, manufacturing, or mining purposes, ditches or water pipes for conveying water to cities and towns for domestic purposes, or for the extinguishment of fires, is hereby granted to any individuals or corporations who may construct such water ditches or water pipes over any of the State lands belonging to the State of Oregon—tide, swamp, and overflowed lands, and school lands—for a distance on each side of said ditches or water pipes of twenty-five feet. [L. 1885, p. 73, § 2.]

§ 3941. Copy of Notes of Survey of Ditches, Etc., to Be Filed.

It shall be the duty of said railroad corporation or water

company or individuals constructing said railroads, water ditches, or water pipes to file a copy of the field notes of the survey of such railroads, ditches, or water pipes with the Secretary of State of the State of Oregon, showing the location of the said railroad, water ditch, or water pipe. [L. 1885, p. 73, § 3.]

§ 3942. State Patents Subject to Vested Water Ditch and Pipe Line Rights.

All patents hereinafter granted by the State of Oregon for any of the class of lands heretofore mentioned shall be made subject to any vested rights of the owners of such railroads, water ditches or water pipes as may have been acquired under the preceding sections. [L. 1885, p. 73, § 4.]

§ 6549. Right of Way Granted Over State Lands.

The right of way, to the extent hereinbefore specified, for the ditches or canals, flumes, distributing ditches, and feeders of any corporation appropriating water, under the provisions of this act, across any and all lands belonging to the State of Oregon and not under contract of sale, is hereby granted. [L. 1891, p. 60, § 25; B. & C. § 5017.]

(c) PUBLIC USE—LIENS—ABANDONMENT, ETC.

§ 6525. What Use of Water a Public One—Right to Collect Rates a Franchise.

The use of the water of the lakes and running streams of the State of Oregon, for general rental, sale or distribution, for purposes of irrigation, and supplying water for household and domestic consumption, and watering live stock upon dry lands of the State, is a public use, and the right to collect rates or compensation for such use, of said water is a franchise. A use shall be deemed general within the purview of this act when the water appropriated shall be supplied to all persons whose lands lie adjacent to or within reach of the line of the ditch or canal or flume in which said water is conveyed, without discriminating other than priority of contract, upon payment of charges therefor, as long as there may be water to supply; *provided, however,* that no part of this chapter shall apply to Bull Run Creek or River, or the waters thereof, being in Clackamas and Multnomah counties, Oregon, from which river or stream water is supplied to the City of Portland. [L. 1891, p. 52, § 1; B. & C. § 4993; L. 1905, c. 104, p. 204.]

See notes to §§ 6594 and 6624.

The legislature having, by the terms of an act, made a declaration of fact which is necessary to authorize the proposed legislation, the courts will not question such a declaration, or pronounce the law invalid on account thereof, unless it plainly violates the constitution: *Umatilla Irrigation Co.* v. *Barnhart,* 22 Or. 391 (30 Pac. 37.)

Municipal Water Systems.

Section 1. That any incorporated city or town, within the

State of Oregon, owning, controlling or operating a system of water works or electric light and power system for supplying water or electricity for its inhabitants, and for general municipal purposes, and any person, persons, or corporation, controlling or operating any water system or electric light and power system under contract, lease, or private ownership, shall have the right, and are hereby authorized and empowered to sell, supply and dispose of water or electricity from such system to any person, persons, or corporation within or without the limits of such incorporated city or town in which such water or electric light and power system is operated, and to make contracts in reference to the sale and disposal of water or electricity from such system, for use within or without the corporate limits.

Section 2. All contracts or agreements heretofore made, and now in effect for the sale and disposal of water or electricity by incorporated cities and towns, and by any person, persons, or corporation, operating, controlling or owning water or electric light and power systems, to any person, persons or corporation within or without the limits of such incorporated city or town, in which such system is operated, are hereby ratified and declared legal and valid contracts, insofar as the right of such city or town to contract with reference to same is concerned. [L. 1911, c. 80, p. 121.]

See *Sherred* v. *City of Baker,* 63 Or. 28.

Diversion or Use of Water May Be in Another State.

Section 1. That no permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or because the place of intended use or the lands to be irrigated by means of such water, or any part thereof, may be situated in some other state, but in all such cases where either the point of diversion or any of such works or the place of intended use, or the land, or part of the lands, to be irrigated by means of such water, are situated within the State of Oregon, the permit shall issue as in other cases; *provided, however,* that the State Engineer may in his discretion, decline to issue a permit where the point of diversion described in the application is within the State of Oregon but the place of beneficial use in some other state, unless under the laws of such state water may be lawfully diverted within such state for beneficial use in the State of Oregon. [L. 1911, c. 224, p. 404.]

§ 6544. Lien on Crops for Water for Irrigation.

Any person, firm or corporation who shall supply water to any person for irrigation of crops shall have a lien upon all crops raised by the use of such water for the reasonable value of the water supplied, which lien shall be a continuing one and shall bind said crops after, as well as before the same have been gathered and without record shall be preferred to all other liens or incumbrances upon said crop whatever. Such liens may be inforced by a suit in equity, and upon judgment or decree of foreclosure the court or judge shall allow as a part of the costs a reasonable sum as attorney's fees. [L. 1891, p. 59, § 20; L. 1913, c. 86, § 2.]

Right Lost by Failure to Use.

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this State, and whenever hereafter the owner of a perfected and developed water right shall cease or fail to use the water appropriated, for a period of five successive years, the right to use shall thereupon cease, and such failure to use shall be conclusively presumed to be an abandonment of such water right, and thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities; *provided,* that this act shall not apply to, or affect, the use of water, or rights of use, acquired by cities and towns in this State, by appropriation, or by purchase, for all reasonable and usual municipal purposes; and this act shall not be so construed as to impair any of the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired; and the right of all cities and towns in this State to acquire rights to the use of the water of natural streams and lakes within the State, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is hereby expressly confirmed. [L. 1913, c. 279, p. 531.]

§ 6571. Right to Appropriate Lost by Abandonment.

The right to appropriate water hereby granted may be lost by abandonment; and if any persons, companies, or corporations constructing a ditch, canal, flume, or pipe line under the provisions of this act shall fail or neglect to use the same for a period of two years at any time, it shall be taken and deemed

to have abandoned its appropriation, and the water appropriated shall revert to the public and be subject to other appropriations in order of priority; but the question of abandonment shall be one of fact, to be tried and determined as other questions of fact. [L. 1899, p. 179, § 20; B. & C. § 5041.]

Such right may be extinguished by any act showing an intent to surrender or abandon the right, after which, if the person having the right ceases its use, for the statutory period of abandonment, his interest is lost. (*Pringle Falls Elec. Power & Water Co.* v. *Patterson et al.*, 132 Pac. 526.)

§ 6598. State Engineer; Appointment, Duties, Qualifications, and Salary.

A State Engineer, technically qualified and experienced as an hydraulic engineer, shall be appointed by the Governor upon the recommendation of the director of the United States geological survey and confirmed by the Senate. He shall hold office for the term of four years from and after his appointment, unless sooner removed by the Governor for cause, and until his successor shall have been elected and shall have qualified. He shall have general supervision of all the measurements and records of appropriation of waters of the State, and of all surveys and engineering work in which the State may be interested, and for which funds are provided, and shall perform all work in connection therewith. He shall receive a salary of $2,400 per annum and actual and necessary traveling expenses while away from his office in the discharge of official duties, and shall not engage in private practice. He may employ assistants and purchase materials and supplies necessary for the proper conduct and maintenance of his office and department, in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of the State Engineer shall be paid at the same time and in the same manner as those of other officers of the State. The office of the State Engineer shall be located at the seat of government in the Capitol Building. The State Engineer and his authorized assistants and agents, may enter upon any private property for the performance of their respective duties, doing no unnecessary injury thereto. The State Engineer shall prepare and deliver to the Governor on or before November 30th of the year preceding the regular session of the legislature, and at other times when required by the Governor, a full report of the work of his office, including a detailed statement of the expenditures thereof, with such recommendations for legislation as he may deem advisable. [L. 1905, c. 228, p. 403, § 6.]

This and the succeeding section are in the main covered by the act of 1909, § 6597, etc., but since they contain some provisions not included in that act and are not expressly repealed, they are allowed to stand.

§ 6599. Oath and Bond of State Engineer.

Before entering upon the duties of his office the State Engineer shall give bond to the State with sufficient sureties in the sum of $5,000 for the faithful performance of his duties, which bond shall be approved by and filed in the office of the Secretary of State, together with the following oath of office: "I, ..., being duly sworn, do say that I am the duly appointed State Engineer of the State of Oregon, and that I will faithfully and honestly perform the duties of such office, and that I am not directly or indirectly, pecuniarily or otherwise interested with any person, association or corporation using or to use any of the waters of the State for any beneficial purpose, in such use thereof, and will not during my term of office become so interested therein or receive any pecuniary aid or benefit therefrom, and shall not permit any assistant employed by me to be or become so interested or receive any pecuniary aid or benefit from such person, association, or corporation while so employed." [L. 1905, c. 228, p. 404, § 7.]

§ 6600. Records of State Engineer.

The records of the office of the State Engineer are public records and shall remain on file in his office and be open to the inspection of the public at all times during business hours. Such records shall show in full all maps, profiles, and engineering data relating to the use of water, and certified copies thereof shall be admissible as evidence in all cases where the original would be admissible as evidence. [L. 1905, c. 228, p. 404, § 8.]

§ 6658. Parties and Costs of Suits.

In any suit wherein the State is a party, for the determination of a right to the use of the waters of any stream system, all who claim the right to use such waters shall be made parties. When any such suit has been filed the court shall call upon the State Engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided in order to obtain all data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in such suit shall be taxed by the court as in other equity suits. [L. 1905, c. 228, p. 402, § 4.]

§ 6659. Decrees Adjudicating Water Rights.

Upon the adjudication of the rights to the use of the water of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the office of the State Engineer. Such decree shall in every case

declare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority. [L. 1905, c. 228, p. 403, § 5.]

(*d*) Ditches, Diversion Works, Etc.

§ 6673. Ditches for Waste, Spring, or Seepage Water.

All ditches now constructed, or hereafter to be constructed, for the purpose of utilizing the waste, spring, or seepage waters of the State, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the waters of running streams; *provided,* that the person upon whose lands the seepage or spring water first arise, shall have the right to the use of such waters. [L. 1893, p. 150, § 1; B. & C. § 5019.]

Under this section there is no difference in the right of appropriation between springs and running streams, and the prior appropriator of the waters of a spring will be as much protected as the appropriator of the waters of a stream: *Brosnan* v. *Harris,* 39 Or. 148, 65 Pac. 867.

This section conferring on the owner of land on which spring or seepage water issues the right to use such water, was intended to give such water to such owner, and he may prevent it from passing off his own land: *Morrison* v. *Officer,* 48 Or. 569, 87 Pac. 896.

§ 6565. Land Not to Be Burdened With More Than One Ditch.

No tract or parcel of improved or occupied land in this State shall, without the written consent of the owner thereof, be subjected to the burden of two or more ditches or canals, flumes, or pipe lines, constructed under this act for the purpose of conveying water through said property when the same object can be feasibly and practically attained, uniting and conveying all the water necessary to be conveyed through such property in one ditch, canal, flume, or pipe line, and any persons, companies, or corporations having constructed a ditch, canal, flume, or pipe line for the purpose hereinbefore provided shall allow any other persons, companies, or corporations to enlarge such ditch, canal, flume, or pipe line, so as not to interfere with the operations of the persons, companies, or corporations owning the same, and use such ditch, canal, flume, or pipe line in common with the persons, companies, or corporations owning the same, upon payment to such persons, companies, or corporations of a reasonable proportion of the cost of constructing and maintaining such ditch, canal, flume, or pipe line. Such persons, companies, or corporations shall be jointly liable to any person damaged. [L. 1899, p. 177, § 14; B. & C. § 5035.]

§ 6574. Rights of Way Over State Lands.

The right of way to the extent hereinbefore specified, for the ditches or canals, flumes, pipe lines, distributing ditches, and feeders of any persons, companies, or corporations appropriating water under the provisions of this act, across any and all lands belonging to the State of Oregon, and not under contract of sale, is hereby granted. [L. 1899, p. 180, § 23; B. & C. § 5044.]

§ 6674. Adjacent Owner, Right to Use Machinery to Raise Water.

Any person who owns or has the possessory right to any land bordering on any lake or natural stream of water, shall have the right to employ wheels, pumps, hydraulic engines, or other machinery for the purpose of raising water to the level required for the use of such water in irrigating any land belonging to such owner; *provided*, that the use of such water shall not conflict with the better or prior right of any other person. [L. 1893, p. 150, § 2; B. & C. § 5020.]

§ 6675. Insufficient Water; Preference Among Different Uses.

When the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference over those claiming such water for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. [L. 1893, p. 150, § 3; B. & C. § 5021.]

§ 6676. Right of Way Along Ditches to Be Kept Free of Weeds.

From and after the passage of this act all companies, corporations, and private individuals owning or controlling any water ditches, shall keep the right of way of said companies, corporations, or private individuals along said ditches, clean and free from wild oats, mustard, thistles, or any weeds or obnoxious grasses whatsoever. [L. 1905, c. 158, p. 270, § 1.]

§ 6677. Penalty for Violation.

Any company, corporation, or private individual violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $25 nor more than $150, together with the costs and disbursements of the action, and in default of the payment of such fine and costs shall be confined in the county jail one day for each $2.00 thereof. [L. 1905, c. 158, p. 271, § 2.]

§ 6678. Justices' Courts to Have Jurisdiction.

Courts of the justice of the peace shall have concurrent jurisdiction with the circuit courts of this State in the trial of all proceedings under this act. [L. 1905, c. 158, p. 271, § 3.]

§ 6539. Head Gates Must Be Maintained.

Every corporation constructing a ditch or canal or flume under the provisions of this act shall be required to erect and keep in good repair a head gate at the head of its ditch or canal or flume, which, together with the necessary embankments, shall be of sufficient height and strength to control the water at all ordinary stages. The framework of such head gate shall be of timber not less than four inches square, and the bottom, sides, and gate or gates shall be of plank not less than two inches in thickness. [L. 1891, p. 57, § 15; B. & C. § 5007.]

§ 6540. Damages, for What Ditch Owner Liable.

Every corporation constructing a ditch or canal, flume, or reservoir, under the provisions of this act shall be liable for all damage done to the persons or property of others, arising from leakage or overflow of water therefrom growing out of want of strength in the banks or walls, or negligence or want of care in the management of said ditch or canal, flume, or reservoir; *provided*, that damage resulting from extraordinary and unforeseen action of the elements, or attributable in whole or in part to the wrongful interference of another with said ditch or canal, flume, or reservoir, which may not be known to said corporation for such length of time as would enable it by the exercise of reasonable efforts to remedy the same, shall not be recovered against said corporation. [L. 1891, p. 57, § 16; B. & C. § 5008.]

§ 6536. Shortest Practicable Route Must Be Selected.

Whenever any corporation organized as aforesaid shall find it necessary to construct its ditch or canal, flume, distributing ditches, or feeders across the improved or occupied lands of another, it shall select the shortest and most direct route practicable, having reference to cost of construction upon which said ditch or canal, flume, distributing ditches, or feeders can be constructed with uniform or nearly uniform grade. [L. 1891, p. 56, § 12; B. & C. § 5004.]

§ 6542. Embankments Must Be Maintained.

Every corporation constructing a ditch or canal or flume under the provisions of this act shall carefully keep and maintain the embankments and walls thereof, and of any reservoir

constructed to be used in conjunction therewith, so as to prevent the water from wasting and from flooding or damaging the premises of others; and it shall not divert at any time any water for which it has not actual use or demand. [L. 1891, p. 58, § 18; B. & C. § 5010.]

§ 6545. Ditches, Etc., Are Real Estate.

All ditches or canals and flumes permanently affixed to the soil, constructed under the provisions of this act, are hereby declared to be real estate, and the same or any interest therein shall be transferred by deed only, duly witnessed and acknowledged. The vendee of the same, or any interest therein, at any stage shall succeed to all the rights of his vendor, and shall be subject to the same liabilities during his ownership. [L. 1891, p. 59, § 21; B. & C. § 5013.]

Revocation of a license to use a ditch does not terminate licensee's water rights. (*Ison* v. *Sturgill*, 57 Or. 109.)

§ 6546. Right to Appropriate Water Lost by Abandonment.

The right to appropriate money [water] hereby granted may be lost by abandonment; and if any corporation constructing a ditch or canal or flume under the provisions of this act shall fail or neglect to use the same for the period of one year at any time, it shall be taken and deemed to have abandoned its appropriation, and the water appropriated shall revert to the public, and be subject to other appropriations in order of priority; but the question of abandonment shall be one of fact, to be tried, and determined as other questions of fact. [L. 1891, p. 59, § 22; B. & C. § 5014.]

An "abandonment" as applied to water appropriation, is an intentional relinquishment of a known right, ascertained from the conduct and declaration of the appropriator. (*Pringle Falls Elec. Power & Water Co.* v. *Patterson et al.*, 132 Pac. 526.)

§ 6548. Parties in Suits to Protect Water Rights.

In any suit which may hereafter be commenced for the protection of rights to water acquired under the provisions of this act, the plaintiff may make any or all persons who have diverted water from the same stream or source, parties to such suit, and the court may in one decree determine the relative priorities and rights of all parties to such suit. Any person claiming a right on said stream or source, not made a party to such suit, may become such on application to the court, when it is made to appear that he is interested in the result of the suit, and may have his right determined, and the court may, at any stage, on its own motion, require any or all persons having or claiming rights to water on said stream or source, to be brought in and made parties to said suit, when it appears

that a complete determination of the issue involved cannot be made without the presence of such person or persons. [L. 1891, p. 59, § 24; B. & C. § 5016.]

§ 6550. Legislature May Fix Water Rates.

This act may at any time be amended by the legislative assembly, and commissioners for the management of water rights and the use of water may be appointed, and rates for the use of water may be fixed by the legislative assembly or by such commissioners; but rates shall not be fixed lower than will allow the net profits of any ditch or canal or flume or system thereof to equal the prevailing legal rate of interest on the amount of money actually paid in and employed in the construction and operation of said ditch or canal or flume, or system thereof. [L. 1891, p. 60, § 26; B. & C. § 5018.]

§ 5136. Ditches and Mining Flumes Real Property—Abandonment Of.

Ditches and mining flumes, permanently affixed to the soil, are hereby declared to be real estate; *provided*, that whenever any person, company, or corporation, being the owner of any such ditch, flume, and the water right appurtenant thereto, shall cease to operate or exercise ownership over said ditch, flume, or water right, for a period of five years, and every person, company, or corporation who shall remove from this State with the intent or purpose to change his or its residence, and shall remain absent one year without using or exercising ownership over such ditch, flume, or water right, shall be deemed to have lost all title, claim, and interest therein. [L. 1898, p. 18, § 9.]

Where a person has not used for the purpose of conveying water a mining ditch for eight or ten years, and no acts of ownership have been exercised thereover, there was an abandonment of such ditch: *Ison* v. *Nelson Min. Co.*, 47 Fed. 202.

There can be no abandonment, however, without some act of the will and an intent to abandon; such intent may be inferred from the declaration and acts of the party charged with the abandonment, and where, after such abandonment, the party fails to exercise acts of ownership within a year his right is lost: *Dodge* v. *Marden*, 7 Or. 457.

No overt act is necessary to constitute an abandonment, it results from an exercise of the will: *Sharkey* v. *Candiani*, 48 Or. 112, 85 Pac. 219.

This section is held not applicable to a reservoir; a "ditch" being an aqueduct, and a "flume" being a part of a "ditch." *Moore* v. *United Elkhorn Mines*, 127 Pac. 964.

§ 7444. Liens Authorized on Mines in Favor of Laborer, Materialman, Etc.

Every person who shall perform labor upon, or furnish material for the working or development of any mine, lode, mining claim, or deposit yielding or containing coal, metal or mineral of any kind, or for the working or development of any such mine, lode, mining claim or deposit in search of any such coal, metal or mineral; and any person who shall do work

upon or furnish materials for any shaft, tunnel, incline, adit, drift, or other excavation designed for the use, or working, or draining of any such mine, lode, mining claim or deposit; and any person who shall do work or furnish material for any road, tramway, train (trail), flume, ditch or pipe line, building, structure or superstructure used for, or in connection with the work or development of any such mine, lode, mining claim, or deposit; and any person who shall perform labor or service in freighting or packing any material or supplies for the use, working or development of any such mine, lode, mining claim, or deposit, or for labor performed in transporting material or the product from such mine, lode, mining claim, or deposit, road, tramway, trail, flume, ditch or pipe line, building, structure or superstructure; and any person who shall furnish any provisions, materials or supplies for the working or development of any such mine, lode, mining claim, or deposit, or the working or operation of any road, tramway, trail, flume, ditch or pipe line, building, structure or superstructure, used or operated in connection therewith, shall have a lien upon such mine, lode, deposit, mining claim, (deposit), road, tramway, trail, flume, ditch or pipe line, building, structure or superstructure to secure to him the payment for the work or labor done, or material furnished, which lien shall attach in every case to such mine, lode, mining claim, deposit, road, tramway, trail, flume, ditch or pipe line, building, structure or superstructure owned or used in connection with the operation and development of the same; *provided*, that when two or more mines, lodes, mining claims or deposits are owned or claimed by the same person or persons, and worked through a common shaft or tunnel, incline, adit, drift or other excavation, or over one tram, or at one mill or other reduction works, then all the mines, lodes, mining claims or deposits so worked, and all roads, tramways, trails, flumes, ditches or pipe lines, buildings, structures or superstructures used or owned in connection therewith, shall, for the purpose of this act, be deemed one mine; *and provided further*, that this section shall not be deemed to apply to the owner or owners of any mine, lode, mining claim, deposit, shaft, tunnel, incline, adit, drift or other excavation, road, tramway, trail, flume, ditch or pipe line, building, structure or superstructure, when the same shall be worked by a lessee or lessees, or by any person or persons other than the owner; *provided*, the lessor or lessors or other person or persons other than the owner of any such mine, lode, deposit, shaft, tunnel, incline, adit, drift or other excavation, millsite or mill, shall have recorded in the mining records of the county wherein any such mining property is

located, a copy of such lease, or any other instrument, before the work shall have begun on such property, except as hereinafter stated; *provided further*, that the owner or owners of any such mine or mines, lodes, deposits, shaft, tunnel, incline, adit, drift or other excavation, mill or millsite, shall, in the manner hereinafter prescribed, post, or cause to be posted, at not less than three conspicuous places upon such mine, at or near the place thereon where the same is being worked or developed, a notice in writing, signed by the owner or owners of such property, stating the name or names of the lessees, or other person or persons other than the owner operating said property, and that the owner or owners thereof will not be responsible for any debt or debts contracted by the lessee or lessees, or other person or persons other than the owner, in connection with the working, operation or development of such property or, for any work, improvement or development thereon under such lease or other instrument. The failure of any owner or owners of such property to post the notices above provided for, and secure the proper recording thereof, shall be deemed conclusive proof of the consent of such owner or owners that his or their interest in such mine shall be subject to any lien filed under the provisions of this act. [L. 1891, p. 76, § 1; L. 1899, p. 180, § 1; L. 1907, c. 152, p. 294, § 1.]

§ 7445. Lien Claimant to File Claim, Within What Time.

It shall be the duty of every laborer or materialman claiming the benefit of this act, within sixty days after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the county clerk of the county in which such mine, lode, mining claim, or deposit yielding or containing coal, metal or mineral of any kind shall be situate, or a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with such lien sufficient for identification, which claim shall be verified by the oath of himself or some other person having a knowledge of the facts. [L. 1891, p. 77, § 2; L. 1907, c. 152, p. 295, § 2.]

This section requiring a claimant to file a "true statement of his demand, after deducting all just credits," a statement not giving a credit for a conceded payment is fatally defective, even though the credit be unimportant in amount: *Lewis* v. *Beeman,* 46 Or. 311, 80 Pac. 417.

Section 7444, as amended, and this section provides that every laborer or materialman claiming under the act shall take certain steps to perfect his lien; and it was held that the phrase "every person who shall perform labor on any mine," etc., applies to ordinary laborers who perform actual, visible toil with their hands or muscles, other kinds of service not being expressly mentioned, and does not embrace superintendents or managers: *Durkheimer* v. *Copperopolis Copper Co.,* 55 Or. 37, 104 Pac. 895.

§ 6427. Supervisors to Notify Owners of Water From Irrigation Ditch on Road.

It shall be the duty of all road supervisors in each road district in any county in this State, in addition to the duties heretofore prescribed by law, to ascertain from time to time, and to know whether or not there is any water running or flowing in or upon any county road or roads within the district, as overflow or seepage from any irrigation or other ditch owned by any person, company, or corporation, and he shall, as he ascertains that there is any such water seeping or flowing or running upon any such county road or roads, notify the owner or occupant of such ditch or of the water therein contained, in writing, by personally serving upon such owner, occupant, or user of such irrigation ditch, or other ditch, a written or printed notice that the water in the irrigation or other ditch so owned by said person, company, or corporation, is seeping or overflowing or flowing on the county road or county roads of his district, at a point or points on said road or roads more particularly described in said notice with reference to said irrigation or other ditch, or any natural or artificial object or objects, which said notice shall further notify such owner, occupant, or user of said irrigation or other ditch of the water flowing therein that such seepage, overflowing, or flowing of said water must be stopped within six hours of the service of said notice, as aforesaid, and notifying said owner, occupant, or user of such irrigation or other ditch, to, within six hours from the hour of service of such notice, have this said water diverted from said county road or roads, and to keep said water from again seeping, flowing, or overflowing upon said county road or roads. [L. 1907, c. 165, p. 315, § 1.]

§ 6428. Supervisor Must Divert Water If Owner Fails.

If such owner, occupant, or user of said water shall fail or refuse to remove or divert said water from said county road or roads within six hours after being notified by the road supervisor of the existence of such water in or upon said road or roads, then it shall be the duty of such road supervisor, and he shall have authority to go upon that part of the land upon which said irrigation ditch or other ditch is situated, through which said water has been conducted or is being conducted, calling to his assistance such help as he may deem necessary to cause said water to be diverted from and removed from said county road or roads, in the manner which to him seems most effective and that will most speedily remove and withdraw said water from said county road or roads, and that

will prevent the said water or any water in said irrigation or other ditch from returning upon or overflowing said county road or roads. [L. 1907, c. 165, p. 316, § 2.]

§ 6429. Supervisor to File Statement of Expense Which Shall Be Lien.

Upon the completion of said work the road supervisor will file with the county clerk of the county in which such road or roads are situated an itemized statement of the time occupied by him and his assistants and the reasonable compensation for diverting and removing said water from said county road or roads, together with the name of the owner and occupant of the land on which said irrigation or other ditch which brought said water to said county road or roads is situated, together with the date and hour when said notice was served on such owner or occupant of said land, verified by his oath, and when said statement is filed the county clerk shall cause the same to be entered upon the lien docket prepared for that purpose, and the amount of such charges and expenses, when so docketed, shall constitute a first lien, prior and superior to all other liens or charges on said land or premises, excepting taxes. [L. 1907, c. 165, p. 316, § 2.]

§ 6430. District Attorney to Foreclose.

If such charges and expenses are not paid and said lien discharged by the owner or occupant of said lands within sixty days after the same is docketed, it shall be the duty of the district attorney in which said county is situated to bring a suit in the name of the said county for the foreclosure of said lien, and the lands affected thereby shall be sold under execution for the payment and satisfaction of such charges and expenses of said lien and all charges touching the same. [L. 1907, c. 165, p. 316, § 2.]

§ 6431. Expenses, When Paid to Supervisor.

If within ten days after the statement has been filed and the lien docketed, as provided for in Section 6429 hereof, no objections having been filed thereto, the county court shall pay the supervisor out of the county funds the amount of such charges and expenses, and the same shall be thereafter recovered to the use of the county, as in the foregoing section provided. [L. 1907, c. 165, p. 317, § 3.]

§ 6382. Owners of Ditch, Etc., to Make Crossing—Proceedings on Failure.

Any person, company, or corporation owning or constructing any ditch, canal, flume, or pipe line across any public high-

way or public traveled road shall put a good, substantial bridge or culvert, of such width and material as the county court of the county in which said bridge or culvert may be situated shall order over such ditch, canal, flume, or pipe line where it crosses said highway or road, and shall thereafter keep the same in good repair. Travel shall not be suspended by the construction of said ditch, canal, flume, or pipe line, and such bridge or culvert shall be completed within three days from the time said highway or road is intersected. In case such bridge or culvert is not so constructed or completed it shall be the duty of the road supervisor of the road district in which the point of intersection is situated to construct said bridge or culvert, and he shall bring an action in his own name, as supervisor, for the use and benefit of his road district, in any court of competent jurisdiction, to recover the expenses of constructing said bridge or culvert; and in such action, in addition to the costs and disbursements provided by statute, he shall recover such sum as the court or justice, if the action be brought in a justices' court, may adjudge to be reasonable as attorney's fees in said action. Appeals may be taken in such cases as in other actions. [L. 1903, p. 262, § 66; L. 1909, c. 193, p. 281.]

§ 5791. Application to Dig Draining Ditch On Land of Another.

When any person, firm or corporation owning land which requires draining, or any incorporated town or city, in which there is any ditch, standing water or surplus water requiring draining, has no means of draining such ditch, standing water or surplus water, and objection is made by the owners of adjacent land to the construction thereon or thereover of necessary means of drainage, such person, firm, corporation or municipal corporation, may make application in writing to the county court in which such land, town or city is situated, for the right of way or privilege to cut or dig or construct sufficient means of drainage over said adjacent land; likewise any person, firm, corporation or municipal corporation whose land is so situated that it is injured or liable to be injured by flood waters from any natural stream flowing through or near to said land, may make application to the county court for the right to enlarge or straighten the bed of such natural stream, or strengthen or build up the banks thereof, so as to protect such lands from overflow or injury thereto. [L. 1868, p. 21, § 1; L. 1905, c. 149, p. 260, § 1; L. 1913, c. 52, p. 83.]

§ 5792. Commissioners to Locate Ditch and Assess Damages.

Thereupon the court shall appoint three disinterested householders of his county as a commission and cause an order

to issue directing them to meet on a day named in such order, and after subscribing to an oath or affirmation to faithfully and impartially discharge the duties of their appointment, and after at least three days' notice given to all persons through whose lands such ditch is to be located or upon whose lands such natural stream is to be straightened, enlarged, or the banks of which are to be straightened or built up. [L. 1868, p. 21, § 2; H. § 3424; B. & C. § 4361; L. 1905, c. 149, p. 261, § 2.]

§ 5793. Ditch Located So As to Do Least Damage.

Said commissioners shall proceed to locate and mark out the route so as to do the least damage to the lands such ditch passes through and to designate the location, character, and extent of the work to be done in straightening the bed or building up the banks of any such natural stream, and also at the same time assess the damages sustained by the person or persons owning such land. [L. 1868, p. 21, § 3; H. § 3425; B. & C. § 4262; L. 1905, c. 149, p. 261, § 3.]

§ 5794. Benefits Considered in Assessing Damages.

In assessing damages, said commissioners shall take into consideration all benefits which will accrue from the work contemplated to the aforesaid lands. [L. 1868, § 4; H. § 3426; B. & C. § 4363; L. 1905, c. 149, p. 261, § 4.]

§ 5795. Report of Commissioners—Ditch May Be Built on Payment of Damages.

The commissioners so appointed, or a majority of them, shall make a report to the county court at the next regular session thereof, stating the location of the ditch or ditches, or other work contemplated, the name of the person or persons entitled to damage, and the amount thereof, if any is assessed; and if the county court is satisfied and the report is just, and after payment by the applicant for right of way of all costs of locating such ditch, or other work, and the damages, if any are assessed, the court shall cause the same to be recorded, and the applicant may proceed to make such ditch, or do such work of straightening said streams, or building up or straightening the banks thereof, doing as little damage to the land it passes through as possible. [L. 1868, p. 21, § 5; H. § 3427; B. & C. § 4364; L. 1905, c. 149, p. 261, § 5.]

§ 5796. Appeal May Be Had.

Any person aggrieved by the assessment of damages may appeal within twenty days to the circuit court. [L. 1868, p. 22, § 6; H. § 3428; B. & C. § 4365.]

§ 5797. Commissioners May Administer Oaths.

In the absence of the justice of the peace, the said commissioners may administer the aforesaid oath to each other. [L. 1868, p. 22, § 7; H. § 3429; B. & C. § 4366.]

§ 5798. Ditch Cannot Be Tapped Without Compensation.

No person shall be allowed to tap or bring water into a ditch already dug without paying a reasonable compensation therefor. [L. 1868, p. 22, § 8; H. § 3430; B. & C. § 4367.]

§ 5799. Act Not Construed So As to Affect What Rights.

This chapter shall not be construed so as to interfere with the rights of companies or individuals for mining, manufacturing, or watering towns or cities. [L. 1868, p. 22, § 9; H. § 3431; B. & C. § 4368.]

Since the rights of those who had appropriated water from the public domain for manufacturing purposes, prior to a conveyance thereof were protected by the act of congress of July 26, 1866 (14 Stat. U. S. 253, c. 262, sec. 9), and the rights of such persons were also protected against persons desiring to construct drainage ditches by the legislative act authorizing the digging of such ditches, under this section, a subsequent patent issued without reserving vested or accrued water rights does not affect them. (*Parkersville Drainage Dist.* v. *Wattier*, 48 Or. 332, 86 Pac. 775.)

§ 1989. Trespass on Mining Claims.

Any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz mill, quartz vein, or lode, bed rock sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary of this State not less than one nor more than five years, or by fine not less than $100 nor more than $1,000, or by both such imprisonment and fine, as the court or judge thereof may direct.

§ 1975. Injury to Conduit, Dam, Etc.

If any person shall maliciously, wantonly or willfully cut, break down, injure, destroy, or remove any water ditch, canal, flume, trench, pipe or reservoir, or any other thing used for conveying, receiving, or holding water used or designed for mining, irrigating, manufacturing, or domestic purposes, or any dam, reservoir, gate, flume, flashboard, or other appurtenance used or designed for any of said purposes, or any wheel, wheel gear, or machinery of any mill or manufactory, or machinery used for pumping water for any of said purposes, or shall maliciously or without color of right obstruct, draw off, or use any portion of the water flowing through or contained in such water ditch, canal, trench, pipe, dam, or reser-

voir, or any mill pond or other receptacle used for containing such water, said person, upon conviction thereof, shall be punished by a fine of not less than $10 nor more than $500. [L. 1864; L. 1865, (sp. sess.), p. 30, § 1; L. 1905, c. 144, p. 255.]

§ 2356. Wire Screens Required at Inlets to Canals and Ditches.

Any person or persons, firm, or corporation, owning in whole or in part, or leasing, operating or having in charge any mill race, irrigating ditch, or canal, taking or receiving its waters from any river, creek, or lake in which fish have been placed or may exist, shall place or caused to be placed and maintain over the inlet of the ditch, canal, or mill race, when required by the Master Fish Warden, a wire screen or grating or such other device, of such construction, fineness, strength, and quality as shall prevent any fish from entering such ditch, canal, or mill race; the same to be placed in such ditch, canal, or mill race on a slant not exceeding forty-five degrees, and in such manner that the bottom thereof shall extend up stream against the flow of water; *provided,* that if a grating device be used the space between the bars shall not exceed one-half inch. Any person or persons, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 and not more than $500 and the costs of the action, or by imprisonment in the county jail not less than ten days nor more than sixty days, or by both such fine and imprisonment; and in case of fine only, that he be imprisoned in the county jail until fine and costs of action be paid and he shall be credited on such fine and costs the sum of $2.00 for each day imprisoned. Justices of the peace shall have concurrent jurisdiction. [L. 1909, c. 232, p. 406, § 66.]

(e) UNNAVIGABLE STREAMS MAY BE DECLARED HIGHWAYS.

§ 6453. County Court May Declare Streams Navigable.

Upon the application of any individual, association, or corporation interested, the county court of any county of this State may, by order, declare all or any portion of any river or stream lying within the county, which has not been declared by law to be navigable, and which is not in fact navigable for commercial purposes, to be a public highway for the floating and transportation of logs, timbers, and lumber, and the same shall thereupon become and be a public highway for such purpose, subject only to the reservations hereinafter contained; and the court may also at the same time, or at any time thereafter, direct the widening, deepening, straightening, removing

obstructions from, building of dams and booms in, and otherwise improving such streams as may be necessary to render the same fit and suitable for the purpose intended, and enter into contracts for the performance of such work according to law. [L. 1889, p. 105, § 1.]

The constitutionality of a statute must be determined by what can be done under it, not by what was actually done in the case under consideration. Notice to the land owner whose property is to be appropriated for public use, and opportunity to be heard as to whether his property shall be taken at all, are necessary elements of every lawful exercise of the right of eminent domain—without them there is not due process of law. (*Hood River Lumber Co.* v. *Wasco County*, 35 Or. 498, 57 Pac. 1017.)

This and the succeeding sections are void, so far as they authorize the taking of private property without due process of law, since no provision is made for notice to the non-consenting land owner of the proceedings for appropriation, or an opportunity given him to defend as a matter of right. (*Hood River Lumber Co.* v. *Wasco County*, *supra*.)

§ 6454. Proceeding to Acquire Right of Adjacent Owner.

In case any owner of land adjacent to or across which such stream flows does not consent to the use of the stream for such purpose, and the making of the improvements directed, with the right to pass along the banks of the stream for the purpose of doing the work and keeping the same in repair, and properly superintending and managing the use of such highway for the purpose intended, and the taking of a fair rate of compensation of such timber and other materials along the bed and banks of the stream as may be necessary for the construction and repair of the improvements, and grant the same to the county by suitable instruments in writing on application, the county court may contract for and purchase any or all of such rights, or if the same cannot be purchased at a satisfactory price, shall, when petitioned so to do by any resident of the county, appoint three disinterested householders of the county as viewers of such stream and land adjacent thereto which is proposed to be used or appropriated for the purpose of such improvements, and it shall be the duty of said viewers appointed as aforesaid to visit and examine such stream and land at such points as shall be directed by the county court, and report to the county court in writing, at such time as shall be fixed in the order appointing them, as to whether damages should be allowed to the owner of the land proposed to be appropriated for the appropriation thereof to the purposes aforesaid, and if so, the amount thereof; and such report, when approved by the county court, shall be final unless appealed from as hereinafter provided, and if damages are allowed to any such owner by said county court, such damage, together with the costs of the viewers, shall be paid to such owner before such stream or land can be appropriated to the purpose of such improvements. Any person who may conceive himself aggrieved by the assessment of damages as above prescribed, may,

within twenty days after such report is adopted by the county court, appeal therefrom to the circuit court of the proper county. Such appeal shall be taken to the circuit court in the same manner as appeals from justice of the peace, and if the appellant shall fail to recover a judgment more favorable than the report appealed from, he shall pay all costs of the appeal. [L. 1889, p. 106, § 2.]

§ 6455. Court May Contract With Lessee.

Instead of itself securing the various rights and making the improvements necessary, the court may enter into a contract with any corporation, association, or individual, leasing the use of such highway with the right to collect tolls for the rafting, floating, and booming of logs, timber, and lumber thereon, at rates of toll for transporting and for booming, to be fixed by the court, for a period of years from the completion of the work to be fixed by the court, in consideration of an agreement in such contract to be contained, that the lessee will secure the right of way and other necessary rights from land owners, and make all improvements necessary for the successful carrying on of the business and use of the stream for the purposes intended, without any expense to the county, and keep the same in good repair during the period of such lease. [L. 1889, p. 106, § 3.]

§ 6456. Bond of Lessee.

Within ten days from the making of such contract, and before the same shall go into effect, the lessee shall enter into a bond in such sum as may be fixed by the court, and with sureties approved by the court, conditioned for the faithful performance of the covenants and agreements on the part of the lessee, in such contract contained. [L. 1889, p. 106, § 4.]

§ 6457. Tolls Fixed by Court.

Such lessee during the term of such lease shall receive and float, or allow to be floated, in such stream all floatable logs, timber, and lumber that may be offered for transportation therein by any person, provided the same be plainly marked with a distinctive mark, and shall have the right to charge and collect for its own use tolls therefor, and for booming the same, at rates fixed by the county court and inserted in the lease, and shall have a lien thereon for such tolls. Upon expiration of the lease, such lessee shall turn the property, with all the improvements, over to the county in good repair. [L. 1899, p. 107, §§ 5, 6.]

(f) The Appropriation of Water for Public Buildings.

§6581. Board of Building Commissioners Must Provide Water for Public Buildings.

The board of public building commissioners, consisting of the Governor, the Secretary of State, and the State Treasurer, is hereby instructed and authorized to provide for supplying the State Insane Asylum, the State Penitentiary, the State Capitol Building, and other public institutions of the State which now are, or may be hereafter, located at or near the seat of government, with water and water power sufficient for the present and future use of such institutions. [L. 1901, p. 307, § 1; B. & C. § 5045.]

Rights of State as riparian owner, see *Salem Mills Co.* v. *Lord*, 42 Or. 82, 69 Pac. 1033, 70 Pac. 832.

§ 6582. Authority of Board to Acquire Water.

The board shall have full power to carry into effect the provisions of this act, and it is authorized and empowered to purchase, to contract for, and to lease, in the name of the State, any real property, water, water rights and water courses, franchises and privileges; and to appropriate and condemn the same for said purposes, whenever the board shall deem it necessary or proper, including the right to take and condemn real property, water, water rights and water courses, franchises and privileges heretofore appropriated for or devoted to a public use by any person or corporation whatsoever, under and by virtue of the laws of this State, or any law of the territory of Oregon, by any corporation or association; to construct canals, flumes, ditches, and pipe lines for conveying such waters, and reservoirs for the storage of the same; to construct, or cause to be constructed, electric and heating plants and apparatus for such institutions; to go upon any lands or premises, in order to make surveys and estimates of cost, and to use such measures and employ such persons as, in the opinion of the board, may be proper and suitable to fully carry out the purposes of this act; *provided, however*, that when the owner of any land, water, water courses and water rights, franchises and privileges, shall fix a price for the same, which, in the opinion of the board shall be reasonable, it may purchase the same at such price without further delay; *and provided*, that if condemnation proceedings are commenced under this act, the board shall have authority and power, at the date of the commencement of such proceedings, to take immediate possession of the real property, water and water rights, and water courses and privileges heretofore in this act mentioned, or of so much of any or either thereof as may be necessary for the uses of the State, and to continue

in the possession and have and enjoy the use thereof during the pendency of such condemnation proceedings, and until the final determination thereof, including an appeal to the Supreme Court, if appeal be taken; and the reasonable rental value for such time shall be assessed by the jury, if the case be tried before a jury, otherwise by the court; and the defendant owner shall have judgment for such reasonable rental value, regardless of whether the condemnation proceedings are finally decided for or against the board, and such reasonable rental value shall be included in the general damages allowed by the court or jury. [L. 1901, p. 307, § 3; B. & C. § 5046; L. 1903, p. 315, § 1.]

§ 6583. Proceedings to Condemn Water.

In any condemnation proceedings under the provisions of this act, the practice, pleadings, forms, and modes of procedure shall conform as near as may be applicable to the practice, pleadings, forms, and procedure prescribed for the appropriation of real property by private corporations, in Chapter 1 of Title XLV; *provided, however,* that in all of such actions and proceedings, when it shall appear that the board has offered the defendant, before commencing the action, an amount equal to or greater than that assessed by the jury, in that case the State shall recover its costs and disbursements off the defendant. [L. 1901, p. 308, § 3; B. & C. § 5047.]

§ 6584. Actions in Name of State—Transfers to Be Made Directly to the State.

All actions and proceedings shall be brought in the name of the State, and the pleadings shall be verified by some member of the board. All conveyances of lands, or water and water rights, franchises and privileges, shall be made directly to the State; and all leases and contracts shall be made by the board in the name of and for the use and benefit of the State. [L. 1901, p. 308, § 4; B. & C. § 5048.]

§ 6585. Secretary of State to Audit Claims.

All claims and sums of money payable or to become due under the provisions of this act shall be audited and paid by the Secretary of State in the manner hereinafter provided. [L. 1901, p. 308, § 5; B. & C. § 5049.]

§ 6586. Authority of the Board to Acquire Rights.

The board may from time to time purchase, lease, contract for, or condemn any property, land, water or water rights, franchises, and privileges, and may repair, improve and enlarge any plants, property or property rights, ditches,

flumes, and pipe lines which may be acquired or constructed under the authority conferred by this act. [L. 1901, p. 308, § 6; B. & C. § 5050.]

§ 6587. Appropriation for Water Supply.

For the purpose of carrying into effect the provisions of this act, there is hereby appropriated out of the public treasury of this State, from any money not otherwise appropriated, the sum of $30,000, or so much thereof as may be necessary, including the expense of surveys and estimates, and of litigation incurred, or that may be hereafter incurred, concerning the supply of water for said institutions; and the Secretary of State is hereby authorized and required to draw a warrant or warrants on the Treasurer, and the Treasurer is to pay all such warrants, for all claims that have been audited by the Secretary of State. [L. 1901, p. 309, § 7; B. & C. § 5051.]

(g) APPROPRIATIONS OF WATER BY THE UNITED STATES.

§ 6588. Appropriation of Water by United States.

Whenever the proper officers of the United States, authorized by law to construct works for the utilization of water within this State, shall file in the office of the State Engineer a written notice that the United States intends to utilize certain specified waters, the waters described in such notice and unappropriated at the date of the filing thereof shall not be subject to further appropriation under the laws of this State, but shall be deemed to have been appropriated by the United States; *provided*, that within a period of three years from the date of filing such notice the proper officer of the United States shall file final plans of the proposed works in the office of the State Engineer for his information; and *provided further*, that within four years from the date of such notice the United States shall authorize the construction of such proposed work. No adverse claims to the use of the water required in connection with such plans shall be acquired under the laws of this State except as for such amount of said waters described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized which release shall also be filed in the office of the State Engineer. In case of failure of the United States to file such plans or authorized construction of such works within the respective periods herein provided, the waters specified in such notices, filed by the United States, shall become subject to appropriation by other parties. Notice of the withdrawal herein mentioned shall be published by the State Engineer in a newspaper published and of general circulation in the stream system

affected thereby, and a like notice upon the release of any lands so withdrawn, such notices to be published for a period not exceeding thirty days. [L. 1905, c. 228, p. 401, § 2.]

§ 6589. Adjudication of Water Rights.

In any stream system where construction is contemplated by the United States under the act of Congress, approved June 17, 1902, and known as the reclamation act, the State Engineer shall make a hydrographic survey of such stream system, and shall deliver an abstract thereof, together with an abstract of all data necessary for the determination of all rights for the use of the waters of such system, to the Attorney General of the State. The Attorney General, together with the district attorneys of the district affected by such stream system, shall, at the request of the Secretary of the Interior, enter suit on behalf of the State of Oregon, in the name of the State, for the determination of all rights for the use of such water, and shall diligently prosecute the same to a final adjudication. [L. 1905, c. 228, p. 402, § 3.]

§ 6590. Hydrographic and Topographic Surveys and Co-Operation With the United States Government.

The State Engineer shall make hydrographic and topographic surveys and investigations of each stream system and source of water supply in the State, beginning with those most used, obtaining and recording all available data pertaining to the water supply of this State. He is hereby authorized to co-operate with the agencies of the United States government engaged in similar surveys and investigations, and in the construction of works for the development and use of the water supply of this State, expending for such purposes any money available for the work of his office. For the purpose of making hydrographic and topographic surveys, there is hereby appropriated out of any moneys in the treasury not otherwise appropriated the sum of $2,500 annually for such hydrographic and $2,500 annually for such topographic surveys, such appropriations, however, being contingent upon the United States government making a like apportionment for such purposes to be expended within the State. [L. 1905, c. 228, p. 404, § 10.]

§ 6591. Disposition of State Lands.

No lands belonging to the State, within the areas to be irrigated from work constructed or controlled by the United States, or its duly authorized agents, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title of such land shall not pass from the State until the applicant therefor shall have fully

complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of State lands within the limits of such withdrawal shall be accepted, except under the conditions prescribed under that section. Any State lands needed by the United States for irrigation works shall be conveyed to the United States without charge. [L. 1905, c. 228, p. 405, § 11.]

§ 6592. Right of Way Over State Lands.

There is hereby granted over all the unimproved lands now or hereafter belonging to the State the necessary right of way for ditches, canals, and reservoir sites for irrigation purposes constructed by authority of the United States or otherwise. All conveyances of State land hereafter made shall contain a reservation of such right of way and reservoir sites. [L. 1905, c. 228, p. 405, § 12.]

§ 6593. Act Not to Rescind Cession to United States.

But nothing in this act shall be construed as rescinding the cession by the State to the United States of lands, as provided in the act known as House Bill No. 1, passed by the twenty-third regular session of the Oregon legislature. [L. 1905, c. 228, p. 406, § 14.]

(h) TRAILS AND WATER COURSES.

§ 6477. Procedure to Establish Trails.

When the citizens of any county within this State shall determine to have a trail, or use a water course, slough, or stream as such road or trail, the same shall be done by petition to the county court of the county where such trail, water course, slough, or stream is situated, said petition to represent a majority of the freeholders of the road district desiring said trails or water courses as such as aforesaid. [L. 1876, p. 10, § 1.]

§ 6448. Location of Viewers.

It shall be the duty of the said county court, if approving said petition, to appoint three competent men as viewers, who shall meet on a given day at one of the points of terminus of said trail or water course, and proceed without delay to view out and locate, by legible tree marks, if a trail, the most eligible and best route from point to point in said petition; if a trail the same not to be less than six feet wide. [L. 1876, p. 10, § 2.]

§ 6449. Report by Viewers.

After such trail or water course shall have been located as a public highway by said viewers, it shall be their duty to make a report to the county court of the county wherein such location shall have been made, giving a complete description of the route so located. [L. 1876, p. 10, § 3.]

§ 6450. Road Work Applied in Building Trail.

The county court, after a full examination of said report, if approved shall order any supervisor of roads within the proper district to call out those liable to work upon roads to do and perform such labor upon such trails or water courses as is now done upon public highways, and such tax shall not thereafter be required for any other road purpose. [L. 1876, p. 10, § 4.]

§ 6451. Under the Control of the County Court.

Such trails or water courses shall be under the control of the county court of the counties in which the same are located, as public highways, and continue to be worked from year to year as roads or highways are worked. [L. 1876, p. 10, § 5.]

§ 6452. Law Not Applicable to County Roads.

The provision of this act shall not apply to county roads. [L. 1876, p. 10, § 6.]

(i) POLLUTION AND OBSTRUCTION OF STREAMS.

§ 2237. Polluting Water and Penalty Therefor.

Any person who shall put any sewerage, drainage, or refuse, or polluting matter, as either by itself or in connection with other matter will corrupt or impair the quality of any well, spring, brook, creek, branch, or pond of water, which is used or may be used for domestic purposes, shall be deemed guilty of a misdemeanor. [L. 1885, p. 110, § 1.]

§ 2238. Animal Carcass, Etc., Unlawful to Place in Water for Domestic Use or Near Dwelling.

If any person shall put any dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner not herein named befouls, pollutes, or impairs the quality of any spring, brook, creek, branch, well or pond of water which is or may be used for domestic purposes, or shall put any such dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance within one-half mile of any dwelling house or public highway and leave the same without proper burial, or being in the

possession or control of any land, shall knowingly permit or suffer any such dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance to remain without proper burial upon such premises, within one-half mile of any dwelling house or public highway, whereby the same becomes offensive to the occupants of such dwelling or to the traveling public, shall be deemed guilty of a misdemeanor. [L. 1885, p. 110, § 2.]

§ 2239. Penalty for Violating Preceding Provisions, and Jurisdiction to Enforce.

Any person violating the provisions of this act shall, upon conviction, be fined not less than $10 nor more than $50, or be imprisoned not less than five days nor more than twenty-five days, or by both fine and imprisonment. Justices of the peace shall have jurisdiction of offenses committed against the provisions of this act. [L. 1885, p. 110, § § 3, 4.]

§ 2240. Polluting Water Used for Domestic Purposes, or to Which Livestock Have Access, Unlawful.

If any person, or persons, shall put any dead animal's carcass, or part thereof, or any excrement, putrid, nauseous, decaying, deleterious, or offensive substance, in any well, or into any spring, brook, or branch of running water, of which use is made for domestic purposes, or to which any cattle, horses, or other kind of stock have access, every person so offending shall, on conviction thereof, be fined in any sum not less than $3.00 nor more than $50. [L. 1889, p. 89, § 1; L. 1891, p. 98.]

§ 2241. Polluting Water Used for Municipal Supply of Adjoining State.

Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute, or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply, shall be deemed guilty of misdemeanor and upon conviction shall be punished by fine in any sum not exceeding $500. [L. 1909, c. 182, p. 256.]

§ 2243. Animal Carcass, Unlawful to Put in River, or Elsewhere to Injury of Health.

If any person or persons shall put any part of the carcass of any dead animal into any river, creek, pond, road, street,

alley, lane, lot, field, meadow, or common, or if the owner or owners thereof shall knowingly permit the same to remain in any of the aforesaid places, to the injury of the health, or to the annoyance of the citizens of this State, or any of them, every person so offending shall, on conviction thereof, be fined in a sum not less than $2.00 nor more than $25, and every twenty-four hours during which said owner may permit the same to remain thereafter shall be deemed an additional offense against the provisions of this act. [L. 1889, p. 89, § 2.]

§ 2337. **Powder, Gas, Lime, Cocculus Indicus, Poison, Etc.**

(*a*) It shall be unlawful to explode or cause to be exploded any giant powder, dynamite, or other explosives in any lake, river, stream, pond, bay or other waters within the boundaries of this State without first obtaining an order permitting it to be done from the board of county commissioners of the county in which it is desired to use the explosives, as hereinafter provided.

(*b*) It shall be unlawful to place, or cast, or pass, or allow to be cast, or flow, or passed, any gas, lime, cocculus indicus, or extract therefrom, or any other substance poisonous to fish, in any lake, river, stream, pond, bay, or other waters within the boundaries of this State, without first obtaining an order permitting it to be done from the board of county commissioners of the county in which it is desired to use the poison, as hereinafter provided.

(*c*) It shall be unlawful to take, or kill, or injure any fish in any lake, river, stream, pond, bay, or other waters within the boundaries of this State by means of giant powder, dynamite, or other explosive, or by means of lime, cocculus indicus, or extract therefrom, or other poison, without first obtaining an order of the county commissioners of the county permitting it to be done as hereinafter provided.

(*d*) Having in possession any trout, salmon, or other game fish under circumstances which make it reasonable to believe that they were taken and killed by means of lime, cocculus indicus or extract therefrom, or other poison, or by giant powder, or dynamite, or other explosive, shall justify the arrest of the person or persons so having the fish in their possession; and it shall then be incumbent upon such persons to prove and show that the fish were taken and killed by lawful means.

(*e*) Every person who aids or abets in exploding any giant powder, dynamite, or other explosive, or in putting any lime, cocculus indicus or extract therefrom, or other poison, in any lake, river, stream, pond, bay, or other waters within the

boundaries of this State contrary to the provisions of this section, or who aids or abets in taking or killing any fish in this State contrary to the provisions of this section, or who aids or abets in taking or securing any fish in this State which he knows or has reason to believe have been killed or injured contrary to the provisions of this section, shall be deemed guilty of violating this section, and upon conviction shall be punished as hereinafter provided.

(*f*) Whenever, in the course of removing any obstructions in any waters within this State, or in constructing any foundations for dams, bridges or other structures, any person shall desire to explode any giant powder, dynamite, or other explosive in any waters within this State, before doing so he shall file a verified petition with the county commissioners of the county setting forth his plans and objects, and when he desires to use the explosive, and what necessity there is for using explosives. If the county commissioners approve of the necessity of using the explosives they may make an order granting the petitioner leave to use explosives, designating the place or places and the period within which the explosives may be used, and prescribing such precautions as will save the fish from injury. If any such person disregards such order he shall be deemed to have violated this section, and upon conviction shall be punished accordingly.

(*g*) Whenever the owner of any lake or pond in this State desires to get rid of and kill the fish known as German carp in said lake or pond, he shall file a verified petition with the county commissioners of the county, stating in what section, township, and range the lake or pond is situated, and with what waters it connects, and his reasons for wishing to kill the fish. He shall truly and particularly state what other kinds of fish are in the lake or pond. If the county commissioners are satisfied that there are no fish other than German carp, catfish, suckers, and such like worthless fish in the lake or pond, and that the same has no outlet whereby the poison can escape into other waters, the commissioners shall make an order permitting the person to put lime or other substance in the lake or pond for said purpose. If any person use lime or other poison in any water within the boundaries of this State, without first obtaining such order, or contrary to such order, he shall be deemed to have violated this section, and upon conviction shall be punished as hereinafter provided.

(*h*) Every person who desires to obtain permission to use explosives, or lime, or poison, under provision of this section, shall serve upon the fish commissioner, or State Game and Forestry Warden of this State, a certified copy of his petition,

not less than ten days before the hearing of the petition. Such service may be made personally upon the fish commissioner or State Game and Forestry Warden, or by registered mail, and the proof of service shall be filed with the commissioner. The fish commissioner or State Game and Forestry Warden or any person interested may oppose the granting of the order, and the same may be reviewed.

(*i*) Any person or persons violating any of the provisions of this section shall be tried in the circuit court of the county wherein such offense shall have been committed, and upon conviction shall be both fined and imprisoned. If it is his first conviction for violating the provisions of said section he shall be fined not less than $200, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment. If he is convicted of violating said section a second time, or oftener he shall then be fined not less than $1,000 nor more than $3,000, and shall be imprisoned in the penitentiary not less than one year nor more than three years for each repeated offense. [L. 1909, c. 232, p. 406, § 50.]

§ 2338. Sawdust, Planer Shavings, Etc.

It shall be unlawful for any proprietor or operator of any sawmill or other lumber manufacturing concern, or of any pulp mill, or wood saw, other wood-sawing or manufacturing concern, or tannery, in this State or any employee thereof, or any other person, to cast sawdust, planer shavings, wood pulp, or other lumber waste, or suffer or permit such sawdust, shavings, other lumber waste or wastes from tannery, to be thrown or discharged in any manner into any waters flowing into the Pacific Ocean within this State, or the Columbia River, or other waters of this State, or to deposit the same where high waters will take the same into the Columbia River, or any other waters of the State. Any person or persons, firm, or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $50, nor more than $500, and costs for each and every offense. [L. 1909, c. 232, p. 406, § 51.]

§ 5245. Obstructions in Rogue River Unlawful—Exception.

It shall be unlawful for any person or persons, firm or corporation, except for securing salmon for propagation purposes, to place any obstruction in Rogue River, which said obstructions will in any way or at all or in any wise obstruct or interfere with the progress of the salmon in going up or down said river, and any person violating this section shall be deemed

guilty of a misdemeanor, and, upon conviction thereof, shall be fined the sum of not less than $50 nor more than $200, or be imprisoned in the county jail not less than thirty days nor more than four months or by both fine and imprisonment in the discretion of the court. [L. 1907, c. 177, p. 334, § 7.]

§ 5269. Placing Deleterious Matter or Explosives in Waters of State Unlawful.

It shall be unlawful for any person or persons to throw or cast, or pass, or cause or permit to be thrown, or cast, or passed, in any waters of the State in which salmon fish of any kind or other food fishes are wont to be, any lime, drug, powder, medicated bait, gas, or cocculus indicus, or any other substance deleterious to fish, or to explode or cause to be exploded in any waters of this State any powder, hercules powder, giant powder, dynamite, nitroglycerine, or any explosive substance whatever, for the purpose of catching, killing, or destroying any salmon or any food fish. [L. 1901, p. 336, § 22; B. & C. § 4077.]

§ 5270. Depositing in Streams Substances Injurious to Salmon Prohibited.

It shall be unlawful for any person to place in any stream of this State where salmon run or exist within the distance from any dam, fishway or object in which the taking of salmon is prohibited by law, any blood or offal of salmon or fish, or any other substance or matter or contrivance that will frighten or drive salmon, or with intent to drive or frighten from or out of that part of the waters of any stream in which it is unlawful to fish for or take the same. [L. 1905, c. 30, p. 94, § 1.]

§ 5288. Obstruction in Fish Stream Prohibited.

It shall be unlawful for any person to construct any milldam or artificial obstruction across any stream in this State frequented by salmon or trout, or to maintain any such milldam or obstruction heretofore erected without providing a passageway for such fish over such obstruction, such passageway for fish to be constructed as near the main channel as may be practicable. It shall be the duty of the fish warden to examine from time to time all milldams and artificial obstructions to all rivers and streams in the State, frequented by salmon or other migratory fish, and if in his opinion there is not a free passage for fish over any milldam or artificial obstruction, to notify the owner or occupant thereof to provide the same within a reasonable time with a durable and efficient fishway, of such form and capacity and in such

location as shall be determined by the fish warden. If such fishway is not completed to the satisfaction of said fish warden within the time specified, the owners or occupants of such milldam or artificial obstruction shall be deemed guilty of a misdemeanor, and on conviction shall be punished as in this act hereinafter provided. It shall be incumbent upon the owners and operators of all milldams or artificial obstructions, where the fish warden requires such fishway to be provided, to keep the same in repair and open and free from obstruction to the passage of fish at all times, and any owner or operator of any dam or artificial obstruction who neglects or refuses to keep such fishway in repair and open and free from obstruction to the passage of fish shall be guilty of a misdemeanor, and upon conviction shall be punished as in this act hereinafter provided; and the continuance from day to day of the neglect or refusal after notification in writing by the fish warden, shall constitute a separate offense; and it shall be unlawful for any person to willfully or knowingly destroy, injure or abstract from such fishway, or to take or catch any salmon or other migratory fish within six hundred feet below any fishway; *provided, however*, that fishing with hook and line only shall be permitted two hundred feet below any fishway. [L. 1901, p. 337, § 24; L. 1911, c. 192, § 1.]

Pollution of North Umpqua River.

Section 1. Any person or persons, who shall put any sewage, drainage, refuse, or polluting matter, or any dead animal carcass, or part thereof, excrement, putrid, nauseous, decaying, deleterious or offensive substance, which either by itself or in connection with other matter, will corrupt or impair the quality of the water for domestic or municipal purposes, into the water of the North Umpqua River, or the tributaries thereof, above the Winchester Power Dam, in Douglas County, Oregon, said dam being located between the points to-wit: Where said river is crossed by the Oregon and California Railroad and the county bridge spanning said stream 1500 feet more or less east of said railroad crossing, or allow any such substance to escape into, or place any such substance in such position that it shall escape or be carried into said waters, or in any other manner not herein named, shall befoul, pollute, or impair the qualities of such waters for domestic or municipal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as hereinafter provided.

Section 2. Any company, corporation, or private individual violating any of the provisions of this act shall, upon conviction thereof, be fined in the sum of not less than $10.00

nor more than $100 or imprisoned in the county jail not less than five nor more than fifty days, or both such fine or imprisonment, in the discretion of the court.

Section 3. Courts of the justice of the peace shall have concurrent jurisdiction with the circuit courts of this State in the trial of all proceedings under this act, and it shall be the duty of the county health officer of Douglas County, Oregon, to enforce the provisions of this act. [L. 1911, c. 8, p. 27.]

Pollution of Deschutes River.

Section 1. It shall be unlawful for any person or persons, company, or association or corporation to put or deposit in the Deschutes River in the State of Oregon, or any tributary thereof, or artificial canal or ditch, in which the waters of said Deschutes River runs, any sewage, refuse, waste or polluting matter, or any dead animal carcass or part thereof, or any matter which either by itself, or in connection with any other substance, will corrupt or impair the quality of the water of said river for domestic or municipal purposes, or to place any such substance in such position that it shall escape or be carried into said waters by the action of the elements or otherwise.

Section 2. Any person or persons, company, association or corporation violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than $25, nor more than $500, or by imprisonment in the county jail not less than ten days nor more than three months, or by both such fine and imprisonment.

Section 3. *Whereas*, the waters of the Deschutes River and of the canals leading therefrom, are becoming so polluted by the deposits of refuse matter that the waters of irrigation ditches leading therefrom, are foul, and deleterious to the health of the people using said water, and the waters from said river have been rendered unwholesome for domestic purposes, this act, in the judgment of the legislature, is necessary for the immediate preservation of the peace, health and safety of the people, and an emergency is thereby declared to exist and this act is excepted from the powers of the referendum and shall become of full force and effect from and after its passage and approval by the Governor. [L. 1911, c. 45, p. 66.]

(*f*) FUNDS.

§ 6602. Appropriations.

There is hereby appropriated out of the moneys in the general fund of the State Treasury, not otherwise appropriated, the sum of $5,000 annually, or so much thereof as may

be necessary for the salary and expenses of the State Engineer and the services of assistants, and expenses of the office and department of the State Engineer. [L. 1905, c. 228, p. 405, § 13.]

See also § 6607.

Appropriations.

There is hereby appropriated out of any moneys in the general fund of the State Treasury, not otherwise appropriated, the sum of $10,000 annually, or so much thereof as may be necessary for the payment of the salaries and expenses incurred by the Board of Control under the provisions of Chapter 216, General Laws of Oregon for 1909, and acts amendatory thereof which appropriation is in addition to the $10,000 annual appropriation heretofore made in Section 6607, of Lord's Oregon Laws. All salaries and expenses incurred and material and supplies furnished under the provisions of this act shall be paid at the same time in the same manner as those of other officers of the State. [L. 1913, c. 86, p. 140, § 6.]

Adjudication Survey Fund.

Section 1. There is hereby appropriated out of any moneys in the general fund of the State Treasury, not otherwise appropriated the sum of $6,900 annually, or so much thereof as may be necessary for the payment of salaries and expenses incurred by the State Engineer in making surveys and investigations in connection with water right determinations by the Board of Control, and the Secretary of State is hereby authorized and directed to audit all duly approved claims which have been incurred in pursuance of law and the foregoing appropriation, and draw his warrant on the State Treasury in payment thereof as provided by Section 2624 of Lord's Oregon Laws, as amended by the Legislative Assembly of 1911.

Section 2. The State Engineer shall receive a salary of $3,000 per annum, and actual necessary traveling expenses while away from his office in the discharge of official duties, payable as other State officers are paid.

Section 3. All acts or parts of acts in conflict or inconsistent with the provisions of this act, are hereby repealed. [L. 1911, c. 239, p. 422.]

$20,000 Co-Operative Fund.

Section 1. In order to complete the topographic map of the State of Oregon, and for the purpose of making more extensive stream measurements, and otherwise investigating and determining the water supply of the State, there is hereby

appropriated out of any funds in the State Treasury not otherwise appropriated, and in addition to the five thousand dollars ($5,000) appropriated in Section 10, Chapter 228, Session Laws for 1905, the sum of twenty thousand dollars ($20,000) annually for co-operation with those branches of the United States Geological Survey engaged in this work. This appropriation, however, shall be contingent upon, and not become available unless the United States government apportion an equal amount to be expended for similar purpose within the State. The State Engineer is hereby authorized and directed to enter into such agreements with the Director of the United States Geological Survey as will insure that the said surveys and investigations be carried on in the most economical manner, and that the maps and data be available for the use of the public as quickly as possible. The Secretary of State is hereby authorized and directed to draw warrants from time to time as provided by Section 2524 of Lord's Oregon Laws as amended by the Legislative Assembly in general session for the year 1911 upon properly verified vouchers, approved by the State Engineer, and the State Treasurer is hereby authorized and directed to pay such warrants.

Section 2. In order to carry out the purposes of this act, all persons employed hereunder are authorized to enter and cross all lands within the State; *provided,* that in so doing no damage is done to private property. [L. 1911, c. 71, p. 110.]

Survey Fund.

Section 1. That all fees paid into the State Treasurer [treasury] as license fees which have been collected, as provided by law, from claimants to the use of water for power purposes, where the right was initiated prior to the 22nd day of May, 1909, shall be credited by the State Treasurer to the Survey Fund, which fund is hereby created. Such fund shall be a continuing fund in the hands of the State Treasurer, to be expended under the direction of the State Engineer for the purpose of securing data necessary to encourage the development and use of the water resources of the State, and the State Engineer is hereby authorized and directed to establish gauging stations at suitable points on the various streams of the State to determine the daily and seasonal fluctuations in the flow of the water; to make surveys and profiles to determine the fall of streams suitable for power development; and to prepare topographic maps of the territory adjacent to the private streams of the State, so that the availability of water for power, irrigation or other beneficial uses, may be determined and made known to the public. All such maps and information shall be made a matter of record in the office of

the State Engineer, and he is hereby directed to publish a summary of all such information in the most practical and economical manner for presentation to the public. The State Engineer is hereby authorized and directed to enter into such agreements and contracts as will insure the said surveys and investigations being carried on in the most economical manner, and that the maps and data may be made available to the use of the public as quickly as possible. The State Engineer is hereby authorized to employ assistants and to purchase materials and supplies necessary in carrying out the provisions of this act. All salaries and expenses incurred shall be paid upon properly approved and audited vouchers from the Survey Fund, to be paid at the same time and in the same manner as State officers are paid.

Section 2. In order to carry out the purpose of this act, all persons employed hereunder are authorized to enter and cross all lands within the State; *provided*, that in so doing, no unnecessary damage is done to private property. [L. 1911, c. 237, p. 419.]

$50,000 Co-Operative Survey Fund.

Section 1. In order that the natural resources of the State of Oregon in land, water and power may be utilized to the highest advantage of the people, complete co-operation between the State and federal authorities in controlling, investigating and developing these resources in the interest of the people of the State is essential; therefore, the State Engineer is hereby authorized, on behalf of the State of Oregon, to enter into such contract or agreement with any federal department or bureau having jurisdiction in such matters for the execution of such surveys and investigations and the preparation of such plans, specifications and estimates or other data by co-operation between the State and such federal department or bureau as will, in the judgment of the State Engineer, approved by the Governor, be best suited to accomplish the purposes of this act; *provided*, that in no case shall the proportion of expense to be borne by the State of Oregon exceed the proportion to be borne by the other party or parties to such contract or agreement.

Section 2. As soon as practicable after the completion of such surveys and investigations, the State Engineer shall prepare or cause to be prepared a report setting forth the plans, specifications and estimated cost of construction, maintenance and operation of such projects, together with any other information tending to show the feasibility of the same, and may in his discretion have such report printed in pamphlet form and distributed to those interested. Copies of all completed

maps, plans, specifications, estimates and reports secured or prepared in connection with any such investigation shall be kept on file in the office of the State Engineer at all times, and shall be open for public inspection during business hours.

Section 3. The State Engineer, on behalf of the State, is hereby authorized and required to withdraw and withhold from appropriation any unappropriated water which may be required for project under investigation or to be investigated under the provisions of this act. If the project is found to be feasible, he shall withhold the same from appropriation until the money expended in the investigation of such project shall be repaid to the co-operating parties in proportion to the amount contributed by each. No permit to appropriate water which may be in conflict with any such project under investigation shall be approved by the State Engineer, nor shall any assignment of plans and information or any part thereof be made except upon consideration and other (order) by the State Water Board after full hearing of all interested parties.

Section 4. As the purposes of this act are to secure the most immediate, as well as the most beneficial, ultimate use of the available waters for any certain project, it is assumed that the State Engineer will, as occasion may require, and he is hereby authorized, to grant permits, and arrange the details so that minor portions of the project may be segregated and constructed at any time; *provided, however,* that the segregation and development of such minor part or parts, shall not interfere to any serious extent with the handling of or completion of the balance of the project.

Section 5. The intent of this act, as outlined in Section 2, is to have on file ready and available, such detailed surveys and information as will not only permit, but that will tend to induce the beneficial use of water by private persons, irrigation districts, corporations, or possibly by the State or National government.

Section 6. There is hereby appropriated out of any money in the general fund of the State Treasury, the sum of $50,000 to carry out the provisions of this act to be expended on vouchers approved by the State Engineer in the same manner as the salaries of State officials are paid. This appropriation shall constitute a revolving fund in the hands of the State Treasurer for the investigation of other projects as herein provided, and upon any moneys being returned to the State Engineer, they shall be promptly turned over to the State Treasurer and again become a part of this fund. [Chap. 87, L. 1913.]

Columbia River Power Project.

Section 1. In order that the public interest in certain undeveloped water power may be protected, and that detailed information as to cost of developing, transmitting and distributing such power in comparison with the cost of producing power from other agencies may be definitely known as a basis for the adoption of some comprehensive policy with reference to the development of our water power resources, the legislative committee to consist of two members of the Senate to be appointed by the President and two members of the House to be appointed by the Speaker, who when appointed, together with the State Engineer, are hereby authorized, on behalf of the State of Oregon, to enter into such contracts or agreements with any officer or agent of the State of Washington as may be found desirable to more economically carry out the provisions of this act. Such committee is also authorized to enter into contract with any federal department or bureau, if found desirable to more economically or efficiently carry out the provisions of this act.

Section 2. It shall be the duty of the committee named in Section 1 to prepare detailed plans, specifications and estimates of cost for the maximum economical development of water power in the Columbia River, near The Dalles, at what is known as Five Mile Rapids. All available information relating to the project shall be collected and carefully checked as to its accuracy, sufficient borings shall be made at the proposed dam site and along the canal to ascertain the character of foundations, and detailed plans shall be prepared as a basis for estimating the cost. The committee shall prepare detailed estimates of cost, under certain assumed conditions, of transmitting such power to various points in Oregon and Washington, including cost of distribution to consumers. The committee shall also estimate the cost of producing power from other sources than water power, in order that the saving in cost, if any, may be apparent, and shall gather such other facts and information as may be of value to the public in the framing of some comprehensive waterpower policy.

Section 3. As soon as practicable after the completion of such surveys and investigations the committe shall prepare, or cause to be prepared, a report, setting forth the plans, specifications and estimated cost of construction, maintenance and operation of such projects, together with any other information tending to show the feasibility of the same, and may, in its discretion, have such report printed in pamphlet form for gratuitous distribution to those interested. Copies of all completed maps, plans, specifications, estimates and reports secured or

prepared in connection with any such investigation shall be kept on file in the office of the committee at all times and shall be open for public inspection during business hours.

Section 4. There is hereby appropriated out of any money in the general fund of the State treasury the sum of $15,000 to carry out the provisions of this act, which sum is to be expended on vouchers approved by the committee in the same manner as salaries of State officials are paid. The committee is hereby authorized to employ assistance and to purchase material and supplies necessary in carrying out the provisions of this act. [L. 1913, c. 374, p. 764.]

Preliminary report on this project was prepared by the State Engineer, assisted by L. F. Harza and V. H. Reineking. This report was published as Bulletin No. 3, of the office of the State Engineer, under date of January, 1912. From this report, it appears that 300,000 horse power can be developed in the vicinity of Five-Mile Rapids, with 536,000 horse power available eight months in the year. The tentative estimate of cost is given as $23,760,000, and the annual cost of delivering low tension power about $7.00 per horse power. The above appropriation is for the purpose of making a more detailed investigation and report under the direction of the committee named in the law.

PART III.

IRRIGATION, DRAINAGE, DIKING, AND IMPROVEMENT DISTRICTS

(*a*) Irrigation Districts.

§ 6167. Irrigation Districts May Be Organized.

Whenever fifty, or a majority of the holders of title to lands susceptible of irrigation from a common source or combined sources and by the same system or combined systems of works desire to provide for the irrigation of the same, they may propose the organization of an irrigation district, under the provisions of this act, and when so organized such district shall have the powers conferred, or that may hereafter be conferred, by law, upon such irrigation districts. [L. 1895, p. 13, § 1; B. & C. § 4700; L. 1911, c. 223, p. 378, § 1.]

§ 6168. Petition and Proceedings Thereon—Notice of Election.

For the purpose of organizing an irrigation district as provided by this act, a petition, signed by the required number of holders of title to the lands within the boundaries of such proposed irrigation district, shall be presented to the county court of the county in which the land, or the greatest portion thereof, is situated; said petition shall set forth and particularly describe the boundaries of the proposed irrigation district and shall state that it is the purpose of the petitioners to organize an irrigation district under the provisions of this act, and shall pray that the same be organized hereunder. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the county court, in double the amount of the probable cost of the organizing such district, conditioned that the bondsmen will pay all the said costs in case said organization be not effected. Such petition shall be presented at a regular meeting of said court, or at any special meeting called to consider and act upon said petition, and shall be published once each week for at least four successive weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where said petition is presented, together with a notice stating the time of the meeting at which the petition will be presented and if any portion of such proposed district lies within another county or counties, then said petition and notice shall be published in a newspaper published in each of said counties in the same time and manner. When such petition is presented, the county court shall hear the same and may adjourn such hearing from time to time, not exceeding four weeks in all, and on the final hearing may make such changes in the proposed boundaries as the court may find

proper, and shall establish and define such boundaries; *provided,* that no land included within the limits of any city or town shall be included in any irrigation district; that said court shall not modify said boundaries so as to except from the operation of this act any territory within the boundaries of the district proposed by said petitioners which is susceptible of irrigation by the same system of works applicable to other lands in such proposed district, nor shall any lands which will not, in the judgment of said court, be benefited by irrigation by said system, be included within such district; *provided,* that any person whose lands are susceptible of irrigation from the same source or combined sources, may in the discretion of the court, upon written application of the owner of said court [land], have such lands included in said district. On the final hearing the court shall make and enter an order determining whether the requisite number of owners of the land within such proposed district shall have petitioned for the formation thereof and whether the petition, and notice of the time of presentation thereof, shall have been duly published as hereinbefore provided, and said order as so made and entered shall be conclusive evidence of the facts found by the court. Said court in said order shall designate the name of said district and divide said district into five divisons, of as nearly equal size as may be practicable, which divisions shall be numbered first, second, third, fourth, and fifth. One director, who shall be a resident of the State of Oregon, and a *bona fide* owner of land situated in the division, shall be elected by each division; *provided,* that if a majority of the holders of title petition for the formation of a district, the county court may, if so requested in the petition, order that there may be either three or five directors, as said court may order for such district, and that they may be elected by the district at large. Said county court shall forthwith give notice of an election to be held in such proposed district for the purpose of determining whether or not the same shall be organized under the provisions of this act. Such notice shall describe the boundaries so established, and shall designate the name of such proposed district, and shall be published once each week for at least four successive weeks prior to such election in a newspaper published within said county; and if any portion of said district lie within another county or counties, then said notice shall be published in a newspaper published within each of said counties in the same time and manner. Such notice shall require the electors to cast ballots which shall contain the words: "Irrigation District—Yes," or "Irrigation District—No," or words equivalent thereto, and shall also contain the names of the persons to be voted for to

fill the various elective offices by this act hereinafter provided. Any person, male or female, of the age of twenty-one years or over, whether a resident of the district or not, who is a *bona fide* owner of land situated in the district, shall be entitled to vote at any election held under the provisions of this act; *provided* that a *bona fide* claimant to an uncompleted title under the public land laws of the United States or of the State of Oregon shall be construed to be a *bona fide* owner of lands within the meaning of this act. [L. 1895, p. 13, § 2; B. & C. § 4701; L. 1909, c. 86, p. 144; L. 1911, c. 223, p. 379, § 2.]

The portion of this section providing that all residents of an irrigation district, male or female, and all owners, of land, residents or not, may vote at elections under this act, is not in conflict with Sec. 2, Art. 2 of the Constitution, prescribing general qualifications of voters, so that an election hereunder was regular and valid. (*Board of Directors of Payette-Oregon Slope Irr. District* v. *Peterson,* 128 Pac. 837.)

§ 6169. Election, How Conducted—Proceeding After Affirmative Vote.

Such election shall be conducted, as nearly as practicable, in accordance with the general election laws of the State; *provided,* that no particular form of ballot shall be required, and that the provisions of the election laws as to the form of ballot shall not apply; *and provided further,* that the provisions of the election laws relating to the nomination of candidates shall not apply, but nominations for the offices hereinafter provided for may be made by petition, signed by at least ten of the electors in the proposed district or division, qualified to vote for the officer or officers so nominated by them, or at an assembly of not less than twenty-five of said electors, which said nominations by petition or by assembly shall be filed with the county clerk at least ten days next preceding the date of said election, and the county clerk shall cause the names of all persons so nominated to be placed on the ballots as candidates for the respective offices for which said persons have been nominated; *provided* such ballots shall have a blank line thereon under the names printed, wherein may be written the name of any candidate voted for. The said county court shall meet on the Monday next succeeding such election and proceed to canvass the votes cast thereat, and if upon such canvass it appears that at least three-fifths of the votes cast are "Irrigation District—Yes," the said court shall, by an order entered on its minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively the highest number of votes for such several offices to be duly elected to such offices. Said court shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and must also immediately forward

a copy thereof to the clerk of the county court of each of the counties in which any portion of the district may lie; and no county court of any county including any portion of such district shall, after the date of the organization of such district, allow another district to be formed including any of the lands in such district without first securing the consent thereof; and from and after the date of such filing the board of directors of the district first organized; and from and after the date of such filing the organization of such district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices upon duly qualifying as provided by this law, and they shall hold their offices, respectively, until their successors are elected and qualified. The court shall in all actions or suits or other proceedings take judicial knowledge of the organization of, and boundaries of all irrigation districts which have been heretofore or may be hereafter organized under the provisions of this act. Such election, on organization, may be contested by any person owning property within the proposed district liable to assessment. The directors elected at such election shall be made parties defendant. Such contest shall be brought in the circuit court of the county where the petition for organization is filed; *provided,* that if more than one contest be pending they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest, and determine, upon the hearing, whether the election was fairly conducted and in substantial compliance with the requirements of this act, and enter its judgment accordingly. Such contest must be brought within sixty days after the canvass of the vote and declaration of the result by the county court. The right of appeal is hereby given to either party to the record within thirty days after the entry of judgment. The appeal must speedily be heard and determined by the Supreme Court, and after the expiration of said period of sixty days no action or suit shall be commenced or maintained or defense made affecting the validity of the organization of any irrigation district organized under the provisions of this act. For the purpose of the election above provided for, the county court must establish a convenient number of election precincts, in said proposed district, and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district; *provided,* that in case said district be divided into five divisions, each division shall constitute an election precinct. In any district the board of directors thereof, may, upon presentation of a petition therefor by a majority of the *bona fide* owners of land situated in said district, order that on and after the next ensuing general election, there shall be

either three or five directors, as said board may order, and that they shall be elected by the district at large or by divisions, as so petitioned and ordered, and after such order such directors shall be so elected. [L. 1895, p. 14, § 3; B. & C. § 4702; L. 1911, c. 223, p. 381, § 3.]

§ 6170. Election of Officers in Each District; Oath and Bonds Of.

An election shall be held in each district on the second Tuesday in January, 1913, and on the second Tuesday in January each two years thereafter, at which a treasurer and board of directors for each district shall be elected. The person receiving the highest number of votes for any office to be filled at such election shall be elected thereto, and shall hold the office from the first Tuesday in February next after such election for two years and until his successor is elected and qualified. Within 10 days after receiving the certificate of election hereinafter provided for said officials shall take the official oath and file the same in the office of the board of directors, and the treasurer shall execute and deliver to the board of directors an official bond in the sum of not less than fifteen thousand ($15,000) dollars nor more than fifty thousand ($50,000) dollars, to be approved by the board of directors as to amount and sufficiency of sureties, and each member of the board of directors shall execute an official bond in the sum of five thousand ($5,000) dollars, which said bonds shall be approved by the judge of the county court and shall be recorded in the office of the county clerk thereof and filed with the secretary of the board. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of county officials. [L. 1895, p. 15, § 4; L. 1909, c. 147, p. 215, § 1; L. 1913, c. 197, p. 382, § 1.]

§ 6171. Time of Taking Effect.

The provisions of this act shall not take effect until the second Tuesday in January, 1911. [L. 1909, c. 147, p. 216, § 2.]

§ 6172. Notice of Election—Judges Of, Constitute Board of Election.

Fifteen days before any election held under the provisions of this act, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board, specifying the polling places of each precinct. Prior to the time of posting the notices, the board must appoint for each precinct, from the electors thereof, three judges of election, who shall constitute a board of election for

such precinct. If the board shall fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of the election, the electors of the precinct at that hour may appoint the board, or supply the places of the absent members thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election is to be held. Candidates may be nominated for any election held hereunder in the same manner as candidates may be nominated at the organization election and all nominations shall be filed with the secretary of the board at least ten days before the date of the election. The said secretary shall cause the names of all persons so nominated to be printed on ballots as candidates for the respective offices for which said persons have been nominated. [L. 1895, p. 16, § 5; B. & C. § 4704; L. 1911, c. 223, p. 382, § 4.]

§ 6173. Organization of Board of Election—Conduct of Election.

The said judges shall elect a chairman of the board who may administer all oaths required in the progress of an election, and appoint judges and clerks, if during the progress of an election any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two clerks to act as clerks of election. Before opening the polls each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon him by law. Any elector of the precinct may administer and certify such oath. The polls shall be opened at eight o'clock on the morning of the election and be kept open until five o'clock in the afternoon, when the same must be closed. The provisions of the general election laws of the State of Oregon concerning the form of ballot shall not apply to the elections held under this act. [L. 1895, p. 16, § 6; B. & C. § 4705; L. 1911, c. 223, p. 383, § 5.]

§ 6174. Time of Election—Counting Ballots.

Voting may commence as soon as the polls are open and may continue during all the time the polls remain open, and shall be conducted as nearly as practicable in accordance with the general election laws for the State of Oregon, and acts amendatory and supplementary thereof. As soon as the polls are closed the judges shall open the ballot box and shall commence counting the votes; and in no case shall the ballot box be removed from the room in which the election is held until all the ballots have been counted. The counting of the ballots

shall in all cases be public. The ballots shall be taken out one by one, by the chairman of the board of election, or one of the judges, who shall open them and read aloud the name of each person contained thereon, and the office for which every such person is voted for. Each clerk shall write down each office to be filled and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read by such judge. The counting of such votes shall continue without adjournment till all the votes shall have been counted. [L. 1895, p. 17, § 7; B. & C. § 4706.]

§ 6175. Certificate of Vote.

As soon as all the votes are read off and counted, a certificate shall be drawn up on each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in words and figures at full length. Each certificate shall be signed by all the members of the board of election and by both clerks. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the chairman of the board of election, and preserved by him for at least six months. The ballots shall be strung on a cord or thread by said chairman, during the counting thereof, in the order in which they are entered upon the tally lists by the clerks; and said ballots, together with the other of said certificates, with the poll list and tally papers to which it is attached, shall be sealed by said chairman in the presence of the other judges and the clerks, and indorsed "election returns of (naming the precinct) precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by said chairman, or by other safe and responsible carrier designated by him, to said secretary, and the ballots shall be kept unopened for at least six months; and if any person be of the opinion that the vote of any precinct has not been correctly counted he may appear on the day appointed by the board of directors to open and canvass the returns and demand a recount of the precinct that is claimed to have been incorrectly counted. [L. 1895, p. 17, § 8; B. & C. § 4707.]

§ 6176. Canvass of Returns Must Be in Public.

No list, tally paper, or certificate returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election to canvass the returns. If, at the time of meeting, the returns of each precinct in which polls have been opened have

been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for, and declaring the result thereof. [L. 1895, p. 18, § 9; B. & C. § 4708.]

§ 6177. Statement of Result, What Must Show.

The secretary of the board of directors must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show: First, the whole number of votes cast in the district (and in each division of the district); second, the names of the persons voted for; third, the office to fill which each person was voted for; fourth, the number of votes given in each precinct to each of such persons; fifth, the number of votes given in each division for the office of director, and the number of votes given in the district for the office of assessor, collector, and treasurer. The board of directors must declare elected the persons having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the office of assessor, collector, or treasurer, the vacancy shall be filled by appointment of the board of directors. In case of a vacancy in the office of director, the vacancy shall be filled by appointment by the county court of the county where the office of such board of directors is situated, from the division in which the vacancy occurred. An officer appointed as above provided shall hold his office until the next regular election for said district, and until his successor is elected and qualified. [L. 1895, p. 18, § 10; B. & C. § 4709.]

§ 6178. Organization of the Board; Duties, By-Laws, Etc.

On the first Tuesday in February next following their election, the board of directors shall meet and organize as a board, elect a president from their number, and appoint a secretary, who shall each hold office during the pleasure of the board. The board shall have the power and it shall be their duty to manage and conduct the business and affairs of the district; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required, and to prescribe their duties; establish equitable by-laws, rules, and regulations for the distribution and use of water among the owners of said lands, and generally to

perform all such acts as shall be necessary to fully carry out the purposes of this act. The said by-laws, rules, and regulations must be printed in convenient form for distribution in the district; and it is hereby expressly provided that all water distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said district bears to the whole sum assessed upon the district; *provided,* that any land owner may assign the right to the whole or any portion of the waters so apportioned to him for any one year. [L. 1895, p. 18, § 11; B. & C. § 4710.]

§ 6179. Meetings—Quorum—Right to Acquire Land and Water, and Build Canals, Dams, Etc.

The board of directors shall hold a regular monthly meeting, in their office, on the first Tuesday of every month, and such special meetings as may be required for the proper transaction of business; *provided,* that all special meetings must be ordered by the majority of the board. The order must be entered of record, and five days' notice thereof must be given by the secretary to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified may be transacted at such special meetings, unless all the members be present. All meetings of the board must be public, and a majority of the members shall constitute a quorum for the transaction of business; but on all questions requiring a vote there shall be a concurrence of a majority of said board. All records of the board shall be open to the inspection of any elector during business hours. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation or drainage works and the line for any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, either by lease, purchase, condemnation, or other legal means, all lands and waters and water rights, rights-of-way and other property, including canals and works constructed and being constructed by private owners, necessary for the construction, use, supply, maintenance, repair and improvement of any canal or canals and works proposed to be constructed by said board, and shall also have the right to so acquire lands and all necessary appurtenances for reservoirs for the storage of needful waters, or for any other purpose reasonably necessary for the purposes of said district. The property, the right to condemn which is hereby given shall include property already devoted to a public use which is less necessary than the use for which it is required by the district,

whether used for irrigation or any other purpose. In case of purchase of any property or right, the bonds of the district hereinafter provided for may be used at their par value in payment and in case of condemnation the board shall proceed, in the name of the district, under the provisions of the laws of the State of Oregon. Said board may also construct or contract for the construction of the necessary canals, dams, reservoirs, pumping plants and other necessary works for the collection and distribution of water in, and for the drainage of said district, and may do any and every lawful act necessary to be done that water may be furnished for the lands in said district for irrigation purposes (or in connection with the drainage thereof) and said district may provide for and furnish water for lands not included within such irrigation district upon receiving proper compensation therefor. In case of construction by the district of any canals, dam, reservoir, pumping plant, power plant, or other necessary work for the collection and distribution of water, or in case the district contracts for the construction thereof, the bonds of the district may be used at par value in payments thereon and may be delivered by the board of directors at such times and in such amounts as may be necessary to enable the district to carry on such construction, or make the payments due by it under said contract. The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, together with all water rights and rights to appropriate water, rights of way for canals and ditches, sites for reservoirs and all other property required in fully carrying out the provisions of this act is hereby declared to be a public use more necessary and more beneficial than any other use, either public or private, to which said water, water rights, rights to appropriate water, lands or other property have been or may be appropriated within said district to an extent less than the whole thereof. [L. 1895, p. 19, § 12; B. & C. § 4711; L. 1911, c. 223, p. 383, § 6.]

§ 6180. Title to Property Vests in District.

The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property as herein provided. [L. 1895, p. 20, § 13; B. & C. § 4712.]

§ 6181. Board Authorized to Take Deeds, Maintain Suits, and Enter Into Contracts With United States.

The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the uses and provisions of this act, in the name of such irrigation district, to and for the purposes herein expressed; to enter into any obligation or contract with the United States of America for the construction of the necessary works, and for the use, control, and maintenance of the same, and the distribution and delivery of water for irrigation therefrom, under the provisions of an act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and all amendments thereof, and all rules and regulations thereunder, and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper in order to fully carry out the provisions of this act or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof; and in all courts, actions, suits, or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. [L. 1895, p. 20, § 14; B. & C. § 4713; L. 1909, c. 219, p. 364, § 1.]

§ 6182. Board to Formulate Plan—State Engineer to Report—Election As to Bond Issue—Bonds.

For the purpose of procuring necessary reclamation works, and acquiring the necessary property and rights therefor and otherwise carrying out the provisions of this act, the board of directors of any such district shall, as soon as practicable after the organization of any such district, by a resolution entered on its records, formulate a general plan of its proposed works, in which it shall state in a general way what works or property it proposes to lease, purchase or acquire, and what work it proposes to construct, and the estimated cost for carrying out said plan, and how it proposes to raise the necessary funds therefor. For the purpose of ascertaining the estimated cost or value of any such work, said board shall cause such surveys, examinations and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans and estimates, shall be made under the direction of a competent irrigation engineer to be employed by said board on such basis of compensation as it may determine, and shall be certified by such engineer. Said board shall then submit a copy of the same to

the State Engineer, and within ninety days thereafter the State Engineer shall make and file a report upon the same with the said board, which report shall contain such matters as in the judgment of the State Engineer, may be reasonably necessary. Upon receiving said report said board of directors shall proceed to determine the amount of money necessary to be raised, and the character and extent of contract and obligations necessary to be undertaken, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district, the question whether or not the bonds of said district, or the right to enter into an obligation or contract with the United States, in the manner, in the amount, and to the extent, as determined and herein provided, shall be authorized. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued, or the extent of the obligation proposed to be undertaken; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; *provided*, that no informalities in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballot shall contain the words "Bonds—Yes," or "Bonds—No," or other words equivalent thereto. If a majority of the votes cast are "Bonds—Yes," the board of directors shall cause bonds in said amount to be issued, or such portion thereof as may be necessary from time to time; if the majority of the votes cast at any bond election are "Bonds—No," the result of such election shall be so declared and entered of record; and whenever thereafter said board in its judgment deems it for the best interest of the district that the question of the issuance of bonds in said amount or any amount, shall be submitted to said electors, it shall so declare of record in its minutes, and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election. The bonds authorized by any vote shall be designated as series, and the series shall be numbered consecutively as authorized. The portion of bonds of a series sold at any one time shall be designated as an issue, and each issue shall be numbered in its order. The bonds of each issue shall be numbered consecutively, commencing with those earliest falling due, and they shall be designated as twenty-one year

bonds, twenty-two years bonds. They shall be negotiable in form and payable in money of the United States as follows, to-wit: At the expiration of twenty-one years from each issue five per cent of the whole number of bonds of such issue; at the expiration of twenty-two years, six per cent; at the expiration of twenty-three years, seven per cent; at the expiration of twenty-four years, eight per cent; at the expiration of twenty-five years, nine per cent; at the expiration of twenty-six years, ten per cent; at the expiration of twenty-seven years, eleven per cent; at the expiration of twenty-eight years, thirteen per cent; at the expiration of twenty-nine years, fifteen per cent; at the expiration of thirty years, sixteen per cent; *provided,* that such percentages may be changed sufficiently so that every bond shall be in an amount of one hundred dollars or a multiple thereof, and the above provisions shall not require any single bond to fall due in partial payments. The board of directors may in its discretion issue said bonds so that they shall commence to mature in eleven years instead of twenty-one years in which case they shall mature each successive year thereafter upon the same basis and percentage as is above provided for bonds commencing to mature on the twenty-first year. Interest coupons shall be attached thereto, and all bonds and coupons shall be dated on January first or July first next following the date of their authorization, and they shall bear interest at a rate of not to exceed six per cent per annum, payable semi-annually on the first day of January and July of each year. The principal and interest shall be payable at the places designated therein. Said bonds shall be each of the denomination of not less than one hundred dollars nor more than one thousand dollars, and shall be signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. Coupons for the interest shall be attached to each bond and signed by the secretary. Said bonds shall express on their face that they were issued by the authority of this act, naming it, and all amendments thereof, and shall also state the number of the issue of which such bonds are a part. The secretary shall keep a record of the bonds sold, the date of sale, the price received, and the name of the purchaser. In case the money raised by the sale of all the bonds be insufficient for the completion of the plans and works adopted, and additional bonds be not voted, it shall be the duty of the board to provide for the completion of said plan by levy of assessments therefor, in the manner herein provided. After such authorization of indebtedness shall have been made by the electors so evidenced by such bond election, the board of directors may, instead of issuing bonds in the manner provided in this act, enter into an obligation or contract with the United States of America for

the construction or purchase of the necessary works under the provisions of an act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and all amendments thereto, and the rules and regulations thereunder, or the board of directors may issue bonds for a portion of the amount of the indebtedness authorized by such bond election, and may enter into an obligation or contract with the United States of America to the extent of the remainder of such amount, and may obligate and bind the district for the payments to be made thereunder in the manner and at the times and places provided by said act of Congress and by the rules and regulations thereunder. [L. 1895, p. 20, § 15; B. & C. § 4714; L. 1909, c. 219, p. 364, § 2; L. 1911, c. 223, p. 385.]

§ 6183. Directors May Enter Into Contract With United States in Lieu of All or Part of Bond Issue.

After such authorization of indebtedness shall have been made by the electors so evidenced by such bond election, the board of directors may, instead of issuing bonds in the manner provided in this act, enter into an obligation or contract with the United States of America for the construction or purchase of the necessary works under the provisions of an act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and all amendments thereto, and the rules and regulations thereunder, or the board of directors may issue bonds for a portion of the amount of indebtedness authorized by such election, and may enter into an obligation or contract with the United States of America to the extent of the remainder of such amount, and may obligate and bind the district for the payments to be made thereunder in the manner and at the times and places provided by said act of Congress and by the rules and regulations thereunder. [L. 1895, p. 20, § 15; B. & C. § 4714; L. 1909, c. 219, p. 364, § 2.]

§ 6184. Board May Sell Bonds—Procedure, and Notice.

The board may sell bonds from time to time in such quantities as may be necessary and most advantageous, to raise money for the construction of said canals and works, the acquisition of said property and rights, and otherwise to fully carry out the object and purposes of this act. Before making any sale the board shall, at a meeting, by resolution, declare

its intention to sell a specified amount of bonds and the day and hour and place of such sale, and shall cause such resolution to be entered on the minutes, and notice of sale to be given by publication thereof at least thirty days in three newspapers published in the State of Oregon, one of which shall be a newspaper published in the county in which the office of the board of directors is situated, if there be a newspaper published in said county, and in any other newspaper, at their discretion; the notice shall state that sealed proposals will be received by the board at their office for the purchase of the bonds till the day and hour named in the resolution. At the time appointed, the board shall open the proposals and may reject all bids; but said board shall in no event sell any of the said bonds for less than ninety per cent of the face value thereof; *provided*, that the board of directors without previously offering said bonds for sale, as above provided, may use said bonds at their par value for the purchase or acquisition of canals, reservoir sites, water rights or other works, or for the construction, or in payment for the construction of any canals, reservoirs, pumping plants or other works to be used for the irrigation or drainage of the lands in the district or any part of said lands; and nothing in this act shall inhibit said district from providing for the irrigation or drainage, or either alone in units or portions from time to time. [L. 1895, p. 22, § 16; B. & C. § 4715; L. 1911, c. 223, p. 388.]

See *Board of Directors of Payette-Oregon Slope Irr. Dist.* v. *Peterson*, 128 Pac. 837.

§ 6185. Bonds, How Paid.

Said bonds and the interest thereon, and all obligations for the payment of money authorized and incurred under this act, shall be paid by revenue derived from the annual assessments upon the land in the district, and all the lands in the district shall be and remain liable to be assessed for such payments as herein provided, and under and subject to the provisions of this act. [L. 1895, p. 22, § 17; B. & C. § 4716; L. 1909, c. 219, p. 367, § 3.]

§ 6186. Assessment of District Lands.

The board of directors shall, on or before the first Tuesday in September of each year, make a computation of the whole amount of money necessary to be raised by said district for the ensuing year, for the purpose of paying all charges and expenses and all obligations of said district incurred by virtue of any contract or obligation with the United States of America, or the issuing of any bonds as herein contemplated, for the construction, purchase or acquisition of any canals, works or property as contemplated, and the expense of main-

tenance of the irrigation system and works of said district, interest on any and all bonds thereof, and including any special assessments that may have been ordered or determined upon, in compliance with this act, and all other charges or expenses of said district, lawfully incurred or to be incurred of whatever name and nature. Said amount of money when so determined by said board, shall be and constitute an assessment upon all of the land included in said district, and shall be apportioned by said board to the lands owned or held by each person, firm or corporation, and each United States Government land entry for which water rights have been provided by said district and contract therefor made with the entryman thereof, in proportion to the number of acres of irrigable land owned or held by each person, firm or corporation, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable (land) therein. The board shall prepare a list or record of said assessments and apportionments in duplicate, giving the description of the ownership or holdings of each person, firm or corporation therein assessed or apportioned, one of which shall be a permanent record in the office of said board: *provided*, that in no case shall any lands be taxed for irrigation purposes, under this act, which from any natural causes cannot be irrigated, or which are incapable of cultivation; *and provided further*, that where ditches, canals, reservoirs, or other irrigation works or pumping plants are actually constructed and in operation at the time of the organization of the irrigation district, the lands actually irrigated therefrom at that time shall not be liable to be taxed, under the provisions of this act, except for benefits accruing thereto by reason of the construction or maintenance of a drainage system or works by said district, until such time as such irrigation district shall purchase, lease or acquire by condemnation or otherwise, such ditches, canals, reservoirs, pumping plants or other works, including water rights; *provided, however*, nothing in this act shall inhibit the board of directors from at any time entering into a contract respecting any lands within said district, exempting such lands from liability under this act, except from debts already incurred, upon condition that the district be exempt from any liability or duty to furnish water or other benefits to said land. [L. 1895, p. 22, § 18; L. 1909, c. 219, p. 367, § 4; L. 1911, c. 223, p. 388; L. 1913, c. 197, § 2.]

§ 6190. Assessment and Equalization of Taxes.

On or before the first Tuesday in September of each year the secretary of the board shall give notice of the time the board of directors, acting as a board of equalization, will meet

for the purpose of reviewing and correcting its assessment and apportionment of taxes, as in this act provided, by publishing the same in a newspaper published in each of the counties in which the district is situated. The time when the board shall meet for said purpose shall be on the first Tuesday of October following, and in the meantime the assessment list and record shall remain in the office of the secretary of the board, for the inspection of all persons interested, and all persons shall be presumed to have notice of the time of such meeting, whether he receives actual notice or not. [L. 1895, p. 23, § 22; L. 1913, c. 197, § 3.]

§ 6191. Equalization Board; Hearing of Objection.

On the first Tuesday of October of each year the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day, as long as may be necessary, not to exceed 10 days, exclusive of Sundays, to hear and determine any objections by any interested persons to the assessments and apportionment thereof and any other matters connected therewith that may come before them, and the board shall change its assessment and the apportionment thereof and the list and the record of the same as to irrigable acreage, description, etc., in any respect and in such manner as may be necessary as to make the same just and in accordance with the facts. The secretary of the board shall be present during these sessions, and shall note all changes made in such assessment, apportionments, lists and record, and in the names of the persons whose property is listed. [L. 1895, p. 24, § 23; L. 1913, c. 197, § 4.]

§ 6192. Levy of Assessment, and Collection.

After the board of directors shall have completed its equalization of said assessment, it shall certify one of the copies or duplicates thereof, made by it during that year, to the county clerk. The county clerk shall enter the apportionment so made, upon the county assessment roll, against the property therein respectfully (respectively) described, in the same manner that other municipal assessments are entered by him on said assessment roll, except that the total sum apportioned to and charged against each description of land therein contained, shall be entered by the clerk as the irrigation district tax against the same. Such tax shall be collected and accounted for in the same manner as other municipal taxes and the collection thereof enforced in the same manner as the other taxes of the county. In case of neglect or refusal of the board of directors to cause such assessment and levy to be made, as in this act provided, then the assessment and levy herein pro-

vided for shall be made and equalized by the county court of the county in which the office of the board of directors is situated, sitting for the transaction of county business, at the same time that said court levies county taxes, and in the same manner with like effect that the board of directors is required to make the same, and all expenses incident thereto, shall be borne by such district, and such levy and assessment shall be entered on the county tax roll, by the county clerk, in the manner in this section provided. [L. 1895, p. 24, § 24; L. 1909, c. 219, p. 368, § 6; L. 1911, c. 223, p. 389; L. 1913, c. 197, § 5.]

The 1913 amendment to this section provides that the assessment roll shall be collected in the same manner as other taxes, the result of which would be that funds would not be available for January interest on the bonds, until April, and the July interest, until November. *Held*, that since the above amendment would impair the irrigation company's contract with the bondholders, it cannot apply to the bonds and other obligations existing at the time of its enactment; and hence a peremptory writ of mandamus will issue to compel the officers of the irrigation district to make the levy and assessment according to the method prescribed prior to the amendment of 1913. (*Gibbons* v. *Hood River Irr. Dist.* 133 Pac. 772.)

The amendment cannot apply to obligations of irrigation districts organized and bonded under the act of 1895, prior to said amendments, if such obligations would be affected thereby. Bondholders are entitled to have the terms of the bonds observed. (*Gibbons* v. *Hood River Irr. Dist.*, 133 Pac. 772.)

§ 6193. Taxation to Pay Indebtedness to United States—Proceedings to Be in Compliance With Provisions of Federal Statute.

Whenever any amount of money shall have been advanced by the United States of America for the construction of irrigation works, contemplated under the provisions of this act, by the authority of said act of Congress, the taxing powers of the district, as provided in this act, shall be used and exercised to repay into the treasury of the United States of America the amount of money so advanced in the manner contemplated in this act, and as provided by said act of Congress and the rules and regulations thereunder, and any contract made in compliance therewith between the directors of said district and the United States of America; and such levies and assessments shall be made each year under the authority of the district as will return to the treasury of the United States of America the amount or proportion of such money advanced as may have been agreed to in such contract; and all canals, works, and property constructed or acquired under this act and said act of Congress and such contract with the United States of America shall be owned, controlled, operated, and administered and water distributed thereby and therefrom in the manner, in the quantity or quantities, to the person or persons, and in all respects in accordance and compliance with the provisions of said act of Congress and the rules and regulations thereunder. [L. 1909, c. 219, p. 369, § 7.]

§ 6202. Prima Facie Evidence of Assessment, What Is.

The assessment and apportionment made by the board of directors as in this act provided, is prima facie evidence that all of the requirements of the law, in relation thereto, have been complied with, and that the same are liens against the property, to the same extent as other taxes lawfully levied. [L. 1895, p. 28, § 33; L. 1913, c. 197, § 6.]

§ 6203. Misnomer of Owner Does Not Affect Sale.

When land is sold for assessments correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or voidable. [L. 1895, p. 28, § 34; B. & C. § 4733.]

§ 6205. Payment of Coupons—Redemption of Bonds.

Upon the presentation of the coupons due to the treasurer, he shall pay the same from said bond fund. Whenever, after ten years from the issuance of said bonds, said fund shall amount to the sum of $10,000, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation, after advertising for at least four weeks in some newspaper published in the county, and in any other newspaper which said board may deem advisable, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bids for said bonds must be accepted; *provided,* that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer, under the direction of the board, in United States gold-bearing bonds or the bonds of the State, which shall be kept in said "bond fund," and may be used to redeem said district bonds whenever the holders thereof may desire. [L. 1895, p. 28, § 36; B. & C. § 4735.]

§ 6206. Advertising Proposals for Work—Letting Contract.

After adopting a plan for said canal or canals, storage reservoirs and works, the board of directors shall give notice, by publication thereof not less than once a week for three successive weeks in one newspaper published in each of the counties composing the district (provided a newspaper is published therein) and in such other newspaper as they may deem advisable, calling for bids for the construction of such

works, or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice. Said notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the the time and place appointed, shall be opened in public; and as soon as convenient thereafter the board shall let said work, either in portions or as a whole, to the lowest responsible bidder; or they may reject any or all bids and re-advertise for proposals, or may proceed to construct the work under their own superintendence. Contracts for the purchase of materials shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for twenty-five per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of a competent irrigation engineer who shall be employed by the board on such basis of compensation as the board may determine, and such work, when completed, shall be approved by the board. [L. 1895, p. 29, § 37; B. & C. § 4736; L. 1911, c. 223, p. 390]

§ 6207. Claims, When and How Paid—Treasurer to Report.

No claim shall be paid by the treasurer until allowed by the board, and only upon a warrant signed by the president and countersigned by the secretary; *provided,* that the board may draw from time to time from the construction fund, and deposit in the county treasury of the county where the office of the board is situated, any sum in excess of the sum of $5,000. The county treasurer of said county is hereby authorized and required to receive and receipt for the same, and place the same to the credit of said district, and he shall be responsible upon his official bond for the safekeeping and disbursement of the same, as in this act provided. He shall pay out the same, or any portion thereof, to the treasurer of the district only, and only upon the order of the board, signed by the president and attested by the secretary. The said county treasurer shall report, in writing, on the second Monday in each month, the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount or amounts paid out; said report shall be verified and filed with the secretary of the board. The district treasurer shall also report to the board, in writing, on the first Monday in each month, the amount of money in the district treasury,

the amount of receipts for the month preceding, and the amount and items of expenditures, and said report shall be verified and filed wtih the secretary of the board. [L. 1895, p. 29, § 38; B. & C. § 4737.]

§ 6208. From What Funds Different Expenditures Paid.

For the purpose of defraying the expenses of the organization of the district, including attorney fees, and of the care, operation, management, repair and improvement of such portion of said canals and works as are completed and in use, including the salaries of officers and employees, and for the raising of money for the purpose of making surveys to ascertain the most feasible plans for the construction of any works authorized by this act, the board may either fix rates of toll and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment therefor, or by both said tolls and assessments; if by the latter method, such levy shall be made on the completion and equalization of the assessment roll, and the board shall have the same powers and functions for the purposes of said levy as are now possessed by the county court of this State. The procedure for the collection of assessments by such levy shall in all respects conform to the provisions of this act relating to the payment of principal and interest of bonds herein provided for, except that such assessments may be made due and payable at any time fixed by the board of directors, in which case such assessments become delinquent upon the expiration of ten days from the date such assessments are made due and payable, *provided,* that where such assessments are made payable at any time other than that fixed for the payment of the annual assessments, the same procedure for the equalization thereof shall apply as is otherwise herein provided, except that ten days' notice of the time fixed for the equalization of the assessment roll shall be given by publication in a newspaper published in the county in which the land is situated, or, if situated in more than one county, then in each county thereof. [L. 1895, p. 30, § 39; B. & C. § 4738; L. 1911, c. 223, p. 391.]

§ 6209. Roads and Water Ways May Be Crossed—Rights Over State Lands Dedicated.

The board of directors shall have power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a sufficient man-

ner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of the said property, thing, or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land. The right of way is hereby given, dedicated, and set apart to locate, construct, and maintain said works over and through any of the lands which are now or may be the property of this State; and also there is given, dedicated, and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this State within the district. [L. 1895, p. 30, § 40; B. & C. § 4739.]

§ 6210. Compensation of Members of Board and Other Officers.

The board of directors shall each receive $3.00 per day and mileage at the rate of ten cents per mile, in attending meetings, and actual and necessary expenses paid while engaged in official business under the order of the board. The board shall fix the compensation to be paid to the other officers named in the act, to be paid out of the treasury of the district; *provided,* the said board shall, upon the petition of at least fifty, or a majority, of the freeholders within such district therefor, submit to the electors at any general election a schedule of salaries and fees to be paid thereunder. Such petition must be presented to the board twenty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are determined and declared under this act. [L. 1895, p. 31, § 41; B. & C. § 4740.]

§ 6211. Directors and Officers Not to Be Interested in Contract—Penalty.

No director or any other officer named in this act shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [L. 1895, p. 31, § 42; B. & C. § 4741.]

§ 6212. Special Elections for Special Assessments.

The board of directors may, at any time when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district, the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of Section 6182. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such election the ballots shall contain the [words] "Assessment—Yes," "Assessment—No." If two-thirds or more of the votes cast are "Assessment—Yes," the board shall at the time of the annual levy hereunder, levy an assessment sufficient to raise the amount voted. The assessment so determined upon shall become a part of the total assessment provided for in Section 6186 and shall be collected as a part thereof. [L. 1895, p. 31, § 43; L. 1913, c. 197, § 7.]

§ 6213. Power to Create Indebtedness Limited.

The board of directors and other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act, and in no event shall the board of directors incur any indebtedness in excess of $200 per acre in the aggregate of the land situated in the district and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void; except that, for the purpose of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur indebtedness not exceeding $1 per acre on each acre of land situated within such district and may cause warrants of the district to issue therefor, bearing interest at seven per cent per annum. [L. 1895, p. 32, § 44; L. 1911, c. 223; L. 1913, c. 17, p. 54.]

Section 14. That two or more irrigation districts organized under the laws of this State or of any adjoining state may unite in the purchase, acquisition or construction of an irrigation system or works for the irrigation of the land within said respective irrigation districts; and in such case, said irrigation districts are hereby jointly granted the same power of condemnation as is now possessed by one district alone; and in such case the cost of purchase, acquisition or construction of such irrigation system shall be apportioned to each district in proportion to the acreage in each district for which water

shall be provided and that such joint works shall be owned jointly in proportion to such respective acreage; that a joint commission not exceeding seven in number shall be chosen by the board of directors of the respective irrigation districts, the members of which shall be apportioned to each district as nearly as practicable in accordance with the acreage for which water shall be provided in each respective district; that said commission shall control and manage such joint works subject to the board of directors of the respective districts, and each member of such commission shall hold office at the will of the board of directors of the district appointing him. [L. 1911, c. 223.]

Section 15. Any irrigation district heretofore organized or hereafter to be organized may, whenever it appears necessary, proper or beneficial to drain any of the lands within said district, whether for the benefit of the lands actually requiring drainage, or for the protection of other lands within said district, whether the irrigation works have been actually acquired or constructed, or not, cause drainage canals and works to be constructed; and to this end, such district shall in all respects have the same power and authority as is now conferred or may hereafter be conferred respecting irrigation, and all powers in this act conferred upon irrigation districts with respect to irrigation shall be construed to include drainage. [L. 1911, c. 223.]

Section 16. The boundaries of any irrigation district organized under the provisions of this act may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its right in or to property, or any of the rights or privileges of whatever kind or nature, nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was liable or chargeable had such change of its boundaries not been made. [L. 1911, c. 223.]

Section 17. The holder or holders of title, or evidence of title, representing a majority of the acreage of any body of land adjacent to the boundaries of any irrigation district, may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioner in manner and form as prescribed in this act for original petitions for the formation of an irrigation district. Such petition shall be deemed to give assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same

manner that conveyances of land are required to be acknowledged. [L. 1911, c. 223.]

In enlarging the boundaries of the district by taking in adjacent territory, the description thereof by legal subdivisions of the U. S. government survey discloses the enlarged boundaries as fully and completely as any survey or description could possibly do. (*Directors of Payette-Oregon Slope Irr. Dist.* v. *Peterson,* 128 Pac. 837.)

Section 18. The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once each week for three successive weeks, in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition and the prayer of said petitioners; giving notice to all persons interested, to appear at the office of said board at a time named in said notice, and show cause, if any they have, why the petition should not be granted. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner or petitioners shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give notice. [L. 1911, c. 223.]

Section 19. The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of said petition may adjourn, shall proceed to hear the petition and all objections thereto, presented in writing by any person, showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such land in said district as prayed for in said petition. [L. 1911, c. 223.]

Section 20. The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay, contract to pay or become liable for, under bond issue or other form of indebtedness incurred or that may be incurred by the district, to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay to such district as assessments for the payment of its *pro rata* share of all bonds and the interest thereon, which may have previously thereto been issued by said district had such lands been included in said district at the time the same was originally formed or when said bonds were so issued. [L. 1911, c. 223.]

Section 21. The board of directors if they deem it not for the best interests of the district to include therein the lands

mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interest of the disrict that said lands or any part thereof be included the board may order that the district be so changed as to include therein the lands or any part thereof mentioned in the said petition. But said board of directors in making any such change in the boundaries of any such district shall not include therein the lands of any owner or owners objecting thereto, without calling an election in the district proposed to be included, in which shall be submitted the questions of "Inclusion—Yes," and "Inclusion —No," which shall be conducted in the same manner as the election for the organization of an irrigation district is now conducted, the irrigation district having the same powers as now conferred upon the county court in respect thereto and which election shall be decided by three-fifths of the vote cast. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for the purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary. [L. 1911, c. 223.]

Section 22. Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change shall be filed for record in the office of the county clerk of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district, as fully to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district. From action on said protest an appeal may be taken in the same manner as is provided in case of proceedings affecting the organization of a district, and in the event said protest be not made within thirty days and appeal taken to the circuit court from action on said protest within thirty days after final hearing, said orders of incluison shall be deemed lawful and conclusive against all persons whomsoever and thereafter shall not be in any manner questioned in any proceeding. [L. 1911, c. 223.]

Section 23. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition. [L. 1911, c. 223.]

Section 24. In case of the inclusion of any land within any district by proceedings under this act the board of directors shall, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into three or five divisions, as nearly equal in size as may be practicable, and one director shall thereafter be elected from each division, as hereinbefore provided. [L. 1911, c. 223.]

Section 25. The boundaries of any irrigation district now organized or hereafter organized under the provisions of this act, may be changed, and tracts of land which were included within the boundaries of such district at or after its organization under the provisions of said act, may be excluded therefrom, in the manner herein prescribed, but neither such change of the boundaries of the district nor such exclusion of lands from the district shall impair or affect its organization, or its right in or to property, or any of its rights or privileges of whatever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which said district was and may become liable or chargeable, had such change of its boundaries not been made, or had not such land been excluded from the district.

(*a*) The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district may jointly or severally file with the board of directors of the district a petition, praying that such tract or tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall state the grounds and reason upon which it is claimed that such lands should be excluded and shall describe the boundaries thereof, and also the lands of such petitioner or petitioners which are included within such boundaries but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor.

(*b*) The secretary of the board of directors shall cause a notice of the filing of such petition to be published once a week for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties. The notice shall state the filing of the petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in, or who may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause, in writing, if any they have, why the change of the boundaries of said

district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice.

(*c*) The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all evidence or proofs that may or shall be introduced by or on behalf of the petitioner or petitioners, and all objections to such petition that may or shall be presented in writing by any person showing cause as aforesaid, and all evidence and proofs that may be introduced in support of such objections. The failure of any person interested in said district, (other than the holders of bonds thereof outstanding at the time of the filing of said petition with said board) to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from said district; and the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof. The expenses of giving said notice and of the aforesaid proceedings shall be paid by the person or persons filing such petition.

(*d*) If, upon the hearing of any such petition, no evidence or proofs in support thereof be introduced, or if the evidence fail to sustain said petition, or if the board deem it not for the best interests of the district that the lands, or some portion thereof, mentioned in the petition, should be excluded from the district, the board shall order that said petition be denied as to such lands; but if the said board deem it for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district show cause, in writing, why the said lands, or some portion thereof, should not be excluded from the district, or if, having shown cause, withdraws the same, or upon the hearing fails to establish such objections as he may have made, then it shall be the duty of the board to, and it shall forthwith, make an order that the lands mentioned and described in the petition, or some defined portion thereof, be excluded from said district; *provided*, that it shall be the duty of said board to so order, upon petition therefor, as aforesaid, that all lands so petitioned to be excluded from said district shall be excluded therefrom which cannot be irrigated from or which are not susceptible to, or would not, by reason of being permanently devoted to uses other than agricultural,

horticultural, viticultural or grazing, be directly benefited by the actual irrigation of the same from a common source, or by the same system of works with the other lands of said district, or from the source selected, chosen, or provided, or the system adopted for the irrigation of the lands of said district, or which are already irrigated, or entitled to be irrigated, from another source or by another system of irrigation works.

(*e*) If there be outstanding bonds of the district at the time of the filing of said petition, the holders of such outstanding bonds may give their assent, in writing, to the effect that they severally consent that the lands mentioned in the petition, or such portion thereof as may be excluded from said district by order of said board, or the decree of the circuit court as hereinafter provided, may be excluded from the district; and if said lands, or any portion thereof, be thereafter excluded from the district, the lands so excluded shall be released from the lien of such outstanding bonds. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgement shall have the same force and effect as evidence as the acknowledgement of such conveyance. The assent shall be filed with the board, and must be recorded in the minutes of the board; and said minutes, or a copy thereof, certified by the secretary of said board, shall be admissible in evidence, with the same effect as the said assent, and such certified copy thereof, may be recorded in the office of the county recorder of the county wherein said lands are situated.

(*f*) In the event the said board of directors shall exclude any lands from said district upon petition therefor, it shall be the duty of the board of directors to make an entry in the minutes of the board describing the boundaries of the district, should the exclusion of said lands from said district, change the boundaries of said district, and for that purpose the board may cause a survey to be made of such portions of the district as the board may deem necessary; and a certified copy of the entry in the minutes of the board excluding any land, certified by the secretary of the board, shall be filed for record in the recorder's office of each county within which are situated any of the lands of the district; but said district, notwithstanding such exclusion, shall be and remain an irrigation district as fully, to every intent and purpose, as it would have been had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

(*g*) If the lands excluded from any district under this act shall embrace the greater portion of any division or divisions of such district, then the office of director for such division

or divisions shall become and be vacant at the expiration of ten days from the final order of the board excluding said lands; and such vacancy or vacancies shall be filled by appointment by the county court of the county where the office of such board is situated, from the district at large. A director appointed as above provided, shall hold his office until the next regular election for said district, and until his successor is elected and qualified.

(*h*) At least thirty days before the next general election of such district, the board of directors thereof, shall make an order dividing said district into three or five divisions as the case may require, as nearly equal in size as may be practicable, which shall be numbered first, second, third, and so on, and one director shall be elected by each division. For the purpose of elections in such district, the said board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary. *Provided, however*, that this section shall not apply to any irrigation district organized under the provisions of this act, in which the directors, at the time of such exclusion, shall have been elected by the district at large.

(*i*) Nothing in this act provided shall, in any manner, operate to release any of the lands so excluded from the district from any obligation to pay, or any lien thereon, of any valid outstanding bonds, or other indebtedness of said district at the time of the filing of said petition for the exclusion of said lands, but upon the contrary said lands shall be held subject to said lien, and answerable and chargeable for and with the payment and discharge of all of said outstanding obligations at the time of the filing of the petition for the exclusion of said land, as fully as though said petition for such exclusion were never filed and said order or decree of exclusion never made; and for the purpose of discharging such outstanding indebtedness, said lands so excluded shall be deemed and considered as part of said irrigation district the same as though said petition for its exclusion had never been filed or said order or decree of exclusion never made and all provisions which may have been resorted to, to compel the payment of said land of its quota or portion of said outstanding obligation, had said exclusion never been accomplished, may, notwithstanding said exclusion, be resorted to to compel and enforce the payment on the part of said land of its quota or portion of said outstanding obligations, of said irrigation district for which it is liable, as herein provided. But said land so excluded shall not be held answerable or chargeable for any obligation of any nature or kind whatever,

incurred after the filing with the board of directors of said district of the petition for the exclusion of said lands from the said district; *provided*, that the provisions of this section shall not apply to any outstanding bonds or other obligations or indebtedness the holders of which have assented to the exclusion of such lands from said district. [L. 1911, c. 223.]

Section 26. An irrigation district may be united, merged and included within another irrigation district by the board of directors causing a petition showing the indebtedness of such district and the boundaries thereof to be presented to the board of directors of the irrigation district in which it is desired to be included, which petition may be accepted or rejected by such board of directors in their discretion; if accepted, an election shall be ordered by such board of directors in the district desiring to be included, in which shall be submitted the questions "Merger—Yes" and "Merger—No," which questions shall be determined by a majority vote of the qualified voters, and which election shall be conducted in the same manner as election for the organization of an irrigation district; and such board of directors shall have the same powers and authority in conducting same as now possessed by the county court in organizing an irrigation district. In the event that the vote is "Merger—Yes" the indebtedness of each district shall be determined and entered upon the records and a division of such indebtedness ordered and shall be binding in the future, and thereafter such districts shall be and become one district and the lands therein included to the same extent and effect in all respects as if originally included. [L. 1911, c. 223.]

Section 27. Whenever a majority of the *bona fide* owners of land in any irrigation district heretofore organized, or hereafter to be organized, under this act, shall petition the board of directors to call a special election, for the purpose of submitting to the qualified voters of said irrigation district a proposition to vote on the dissolution of said irrgation district, setting forth in said petition that all bills, obligations, and claims of every nature whatsoever against said district have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all claims, obligations and bills have been fully paid, satisfied and cancelled to call an election, setting forth the object of the said election and to cause notice of said election to be published in some newspaper in each of the counties or county in which said district is located, for a period of thirty (30) days prior to said election, setting forth the time and place for holding said election in each of the voting precincts in said districts. It shall also be the duty of the directors to prepare ballots to be used at

said election, on which shall be written or printed the words, "For Dissolution—Yes," and "For Dissolution—No." [L. 1911, c. 223.]

Section 28. The board of directors shall name a day for canvassing the vote, and if it shall appear that sixty per cent of said ballots contain the words "For Dissolution—Yes," then it shall be the duty of said board of directors to declare said district to be disorganized and dissolved and shall certify to the county clerk of the respective counties in which the district is situated, stating the number of signers of said petition. That the election was called and set for said..... day of.....(month) of.....(year). That said election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating number) had been cast against said proposition, said certificates to bear the seal of the district, and the signature of the president and secretary of said board of directors and in such event such district shall then be legally dissolved. And it shall be the duty of the said respective clerks to record all such certificates in the records of the respective counties. Should it appear that forty per cent of the votes cast at said election were "For Dissolution—No," then the board of directors shall declare the proposition lost, and shall cause the result and the vote to be made a part of the records of said irrigation district, unless an appeal be taken to the circuit court within sixty days from the date of the order declaring said district dissolved, such dissolution shall be final and it shall be conclusively presumed that said district was regularly dissolved. [L. 1911, c. 223.]

Section 29. The board of directors of an irrigation district organized under the provisions of this act, may, by petition, commence special proceedings in the circuit court of the county in which the office of such district is located, for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of the proceedings of the said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold, or disposed of. [L. 1911, c. 223.]

Section 30. The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published for three successive weeks in a newspaper published in the county where the office of the district is situated. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization

of said district, or in the proceedings for the issue or sale of said bonds, may on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of.....irrigation district, (giving the name), praying that the proceedings of the issue and sale of said bonds of said district may be examined, approved and confirmed by the court. Any person interested in said district, or in the issue of said bonds may demur to or answer said petition. [L. 1911, c. 223.]

Section 31. Upon the hearing of such special proceedings, the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner in this act prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of said act, from and including the petition for the organization of the district unless theretofore determined as in this Act provided, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The cost of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court. [L. 1911, c. 223.]

Section 32. The board of directors of an irrigation district heretofore, or that may hereafter be organized, may commence special proceedings in the circuit court of the county in which the office of such district is located for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of the organization of said district, which proceeding shall be conducted in the same manner as is in this Act provided for a hearing as to the regularity and legality of the proceedings of the said district, providing for the authorizing the issue and sale of the bonds of the district. [L. 1911, c. 223.]

Section 33. The board of directors may, within the time hereinafter limited, after the order of the county court declaring the organization of any irrigation district hereunder, or declaring the result of any election hereunder, or after the order of the board of directors of such irrigation district including or excluding any lands in or from said district or

declaring the result of any election, general or special, herein provided for or after any order of such board of directors levying any assessment, general or special, or ordering the issue of any bond for any purpose hereunder, or after the order determining any bond issued or providing for the same, or after such bond issue, bring a proceeding in the circuit court of the county in which the district, or the larger portion thereof, is situated for the purpose of determining the validity of any of the acts or things in this section above enumerated. Said proceeding shall be a proceeding in the nature of a proceeding *in rem*, and the practice and procedure therein shall follow the practice and procedure of suits in equity so far as the same shall be consistent with the determination sought to be obtained except as herein provided.

Jurisdiction of the said irrigation district, of each and all of the freeholders, assessment payers and legal voters therein shall be obtained by the publication of summons directed to said district and to "all freeholders, legal voters and assessment payers within said district" without naming such freeholders, legal voters and assessment payers individually. Such summons shall be served on all parties in interest by publication thereof for at least once a week for three successive weeks in some newspaper of general circulation published in the county where said proceeding is pending, and jurisdiction shall be complete within ten days after the full publication of said summons as herein provided.

Any person interested may, at any time before the expiration of said ten days, appear and contest the validity of such proceeding, or of any of the acts or things therein enumerated. Such proceeding shall be speedily tried and judgment rendered declaring the matter so contested to be either valid or invalid, and any order or judgment in the course of such proceeding, or any final decree therein, may be made and rendered by the judge of such court in vacation, and for the purpose of any such order, judgment or decree the said court shall be deemed at all times to be in session and the act of the judge in making such order, judgment, or decree shall be the act of the court.

Either party may have the right to appeal to the Supreme Court at any time within thirty days after the rendition of the final judgment or decree, which appeal must be heard and determined within three months from the time of taking such appeal. [L. 1911, c. 223.]

Section 34. If any such proceedings, as enumerated in Section 33 of this Act, shall not have been brought by the board of directors within thirty days after the entry of the order or performance of any acts in said Section 33 enumerated, and for which a contest is by said section provided, then any dis-

trict assessment payer or other interested person may bring a like proceeding in the circuit court of the county where the lands embraced within such district, or the majority thereof, are situated, to determine the validity of any of the acts, orders or things enumerated in said Section 33, and concerning which the right of contest is by said section given.

In such proceeding the board of directors shall be made parties defendant and service of summons shall be made on the members of the board personally if within the county where said district, or any part thereof, is situated, but as to any director not within such county service may be had by publication of summons for a like time and in like manner as is provided by Section 33, and service shall be deemed complete within ten days from the date of personal service thereof within such county, or within ten days from the date of the completion of the publication thereof, as the case may be. Such proceeding shall be speedily tried in the same manner as provided by Section 33 of this Act with the right of appeal to either party and said appeal shall be determined within the time and manner provided by said Section 33. [L. 1911, c. 223.]

Section 35. The court hearing any of the contests provided for by this Act, or any inquiry into the legality or correctness of any of the proceedings herein provided for, must disregard any error, irregularity, informality or omission which does not injuriously affect the substantial rights of the parties to said proceeding, and no contest of any proceeding, matter or thing by this Act provided to be had or done by the board of directors of said district, or by said district, or by the county court, shall be had or maintained at any time or in any manner, except as herein provided. [L. 1911, c. 223.]

Section 36. That Section 6215 of Lord's Oregon Laws, the same being Section 4745 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon, be and the same is hereby repealed. [L. 1911, c. 223.]

Section 37. That Section 6216 of Lord's Oregon Laws, the same being Section 4746 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon, be and the same is hereby repealed. [L. 1911, c. 223.]

Section 38. Nothing in this Act shall be so construed as to affect the validity of any district heretofore organized under the laws of this State, or its rights in or to property, or any of its rights or priviliges of whatsoever kind or nature; but said districts are hereby made subject to the provisions of this Act so far as applicable; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for, or upon which it was or might become liable or chargeable had not this

Act been passed; nor shall it affect the validity of any bonds which have been issued but not sold; nor shall it affect any action which may now be pending. [L. 1911, c. 223.]

Section 39. WHEREAS, an urgent necessity exists for a more complete system governing the organization and management of the affairs of irrigation districts within the State of Oregon, and that by reason of the insufficiency of the present laws, numerous irrigation projects are being held in abeyance, and the provisions of this Act are necessary to the public peace, health and safety, and an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its approval by the Governor, and is hereby exempted from the operation of the referendum provisions of the State Constitution. [L. 1911, c. 223, p. 378.]

§ 6214. Apportionment of Water Among Localities.

In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all. Said water commissioners shall consist of the chairman of the board of directors of each of the districts affected. [L. 1895, p. 32 § 45; B. & C. § 4744.]

§ 6217. Act Does Not Modify Other Laws or Authorize Diversion of Water.

None of the provisions of this Act shall be construed as repealing or in anywise modifying the provisions of any other act relating to the subject of irrigation or water commissioners. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal, or ditch from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, canal, or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this State, authorizing the taking of private property for public uses. [L. 1895, p. 33, § 48; B. & C. § 4747.]

(*b*) DRAINAGE DISTRICTS.

§ 6126. Petition to Establish Drainage Districts.

Whenever twenty-five per cent of the owners of any body of land susceptible of one system of drainage desires to

drain the same for the public benefit for sanitary purposes, for the improvement of agriculture or to prevent overflow from flood waters or any possible rise of the level of the sub-surface waters thereof, they may present to the county court of the county in which the lands or the greater portion thereof are situated at a regular term of court a petition praying for the organization of a drainage district. Such petition shall contain a description of the boundaries thereof, the approximate number of acres in the proposed district, the name or number proposed for the same, the names of the owners of each tract of land included therein separately owned, and a description of such separately owned tracts, and the names of three persons to serve as trustees for the first year and until their successors are chosen and qualified. Such petition shall also contain a general description of the route and character of the proposed drainage system, and the necessity for such drainage. It must be verified by affidavit of one of the petitioners, and must be published for four weeks next preceding the date designated in the petition for the hearing thereof in some newspaper published in each county in which the lands included in said district are situate, and must be posted for the same length of time on bulletin board in the county court house of each such county; and a copy thereof shall be served on each record owner and person in possession of such lands if to be found within the county or counties in which such proposed drainage district may be located. [L. 1889, p. 25, § 1; B & C. § 4665; L. 1909, c. 177, p. 248, § 1; L. 1911, c. 241, p. 424.]

§ 6127. District Partly in Different Counties, Manner of Proceeding.

When a district is situated partly in different counties, the trustees must, after the petition has been granted, forward a copy thereof to the county clerk of any county in which any portion of the district may lie, and the court to which the same is forwarded must not allow another district to be formed within such district unless with the consent of the trustees thereof. [L. 1889, p. 26, § 2; B. & C. § 4666.]

§ 6128. Approval of Petition by County Court.

Any person owning lands within the district or whose lands are affected by the drainage thereof may appear at the hearing to support or oppose the petition. If a remonstrance against the granting of the petition be filed at the hearing, or at such further time as may be granted by the court, signed by two-thirds of the owners of the property within the district, the petition shall not be granted. If no such remonstration be filed and the court find that the district is of public utility and importance, and that the benefits to be derived

from the proposed drainage will exceed the cost thereof, that no land is improperly included in or excluded from the district, and that the system of drainage in general meets with their approval they shall note their approval upon the petition and cause an order to be entered in the county records approving the same. The court may, however, by order, alter the boundaries of the district or prescribe in general terms a different system of drainage. If such alteration shall affect any lands not affected by the first petition, notice shall be given in like manner to the owners of such land for such time as the county court may prescribe, not less than two weeks, and a hearing shall be had at a subsequent term to be fixed by the court by order. From and after the entering of such order the district is duly formed, and the persons named in the petition or such other persons as the county court may designate in such order are directors for the first year and until their successors are elected and have qualified. [L. 1889, p. 26, § 3; B. & C. § 4667; L. 1911, c. 241, p. 424.]

§ 6129. Petition to Be Recorded.

The petition shall then be recorded in the records of the county commissioners' court. [L. 1889, p. 26, § 4; B. & C. § 4668.]

§ 6130. Petitioners May Make By-Laws.

After the approval of the petition by the county court the directors shall cause a meeting of the residents of the district to be held, at a convenient time and place, and upon reasonable notice to the owners of lands within the district, for the purpose of adopting such by-laws as they may deem necessary for carrying out the purposes for which the district was organized. Such by-laws shall prescribe the manner of election of trustees, of the acquirement of real and personal property for the purposes of the district, and for the construction, maintenance, and operation of the drainage system. They may also make provisions supplemental to those contained in the law for the assessment and collection of liens upon the lands embraced in the district, for the construction, operation, and maintenance of the drainage system, and for the issuance and sale of bonds secured by the lands within the district to provide money for the purposes thereof. Such by-laws shall not be operative until they are approved by the county court, which approval shall be noted upon a copy thereof to be kept on the files by the county clerk, and the court shall have power to modify or amend said by-laws, by and with the consent of the land owners of the district at a meeting called upon such reasonable notice as may be prescribed in such by-laws. [L.

1889, p. 26, § 5; B. & C. § 4669; L. 1909, c. 177, p. 249, § 2; L. 1911, c. 241, p. 424.]

§ 6132. Power and Authority of Drainage District Board.

The board thus formed shall have power to elect one of its number president thereof and to employ engineers to survey, plan, locate and estimate the cost of the works necessary for the drainage of the lands in such drainage district, and such board shall have power to estimate and determine the amount and value of land needed for the right of way for such drainage system; and all lands which may be necessary and convenient as an outlet for such drains and ditches, although no part of the same may be marshy or wet, may be included in the drainage district provided for by this Act; and in all cases where the owner of any lands which may be necessary or convenient for such right of way is unwilling to convey the same to the trustees of such drainage district for the sum estimated by them to be its fair value, the owner of such land shall appoint one disinterested householder, and the trustees of such drainage district one householder, who shall appoint the third householder, and the three so chosen shall arbitrate the amount to be paid for the right of way, and the award of such arbitrators shall be final, and the amount of such award shall be first paid before the right of way shall be appropriated, and if they cannot agree on a reasonable price within ten days from the time the same is submitted to them, then such trustees, in their name and for the use of such drainage district, may maintain an action at law for the appropriation of so much of such land as they may deem necessary for the uses aforesaid before the circuit court of the county where such land is situated in the same manner and with like effect as is provided in Chapter I of Title XLV. [L. 1889, p. 26, § 7; L. 1891, p. 471, § 1; B. & C. § 4671.]

§ 6133. Drainage Districts May Bring Action to Condemn Lands.

All drainage districts organized in the State of Oregon, and those that may be hereafter organized, are hereby authorized in case they cannot agree with the adjacent owners of the land, between their drainage districts and some suitable outlet to a stream or place where the district may be properly drained, to bring an action at law in the circuit court of the proper county, for the purpose of determining the damage of the person, persons, corporation, county, or whomsoever may be the owner of the land sought to be appropriated for the purpose of securing a suitable outlet in order that the district may be properly drained. [L. 1909, c. 44, p. 92, § 1.]

§ 6134. Actions Tried As Other Condemnation Proceedings.

All such actions may be tried in the same manner and form as like actions are now tried by other corporations authorized to conduct like actions, and the same law shall apply to the practice and method of procedure as the statutes now provide for in the cases last mentioned. [L. 1909, c. 44, p. 92, § 2.]

§ 6135. Board Must Report to County Court.

The board of trustees must report to the county court of the county or if the district is situated in more than one county, then to the county court of each county in which the district or any portion thereof is situated, the plan of the work and the estimates of the cost, together with the estimates of the incidental expense of superintendence, repairs, etc. [L. 1889, p. 26, § 8; B. & C. § 4672.]

§ 6136. Commissioners to Assess Charges and Benefits.

The county court by which the district was formed shall appoint three viewers, disinterested taxpayers of the county in which the district, or some part thereof, is situate and such viewers must view the lands situate in the district and make upon such lands an assessment of the benefits which they may derive from the work. Such assessment shall be reported to the county court, which shall review and consider the objections to the same at a subsequent term to be fixed by its order, and of which notice shall be given by posting the same on the bulletin board in the county court house in each county embraced in the district, and in such other manner as the county court may prescribe. After such assessments shall have been reviewed and equalized by the county court, if it shall find that the same are just and that the amount produced by the same will be sufficient to carry out the proposed system of drainage, it shall by order cause the sums so assessed to be entered either upon the general assessment roll or a separate roll to be provided for by the court, and thereupon such assessment shall become a lien upon the lands therein described, and shall be collected in like manner as general taxes are collected, or by civil suit or action, as the county court may direct. The court may by order direct that such assessment may be paid by installments, and bonds issued against the same, in the manner provided by Chapter 5 of Title XXVI, Lord's Oregon Laws, being Sections 3245-3253 thereof. The county clerk shall perform the duties develoved upon the auditor, the county judge the duties devolved upon the mayor, and the county treasurer the duties devolved upon the city treasurer by such Act. [L. 1889, p. 27, § 9; B. & C. § 4673; L. 1911, c. 241, p. 424.]

§ 6137. Warrants to Be Presented to County Treasurer.

The warrants drawn by the trustees must, after they are approved by the county court, be presented to the treasurer of the county, and if not paid on presentation, indorsement must be made thereon, and they must be registered in like manner as county warrants. If a district is situated partly in different counties, the charges must be paid into the treasury of the county in which the said district was originally created. [L. 1889, p. 27, § 10; B. & C. § 4674.]

§ 6138. Original Assessment Insufficient, Additional Assessment.

If the original assessment is insufficient to provide for the complete drainage of the land of the district, or if further assessments are from time to time required to provide for the protection, maintenance, and repairs of the works, then the trustees must present to the county court by which the district was formed a statement of the work to be done and its estimate cost; and the court must make an order directing the commissioners who made the original assessment, or other commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the lands in the district, which assessment must be made and collected in the same manner as the original assessment. [L. 1889, p. 27, § 12; B. & C. § 4675.]

§ 6139. List of Charges Assessed Against Each Tract to Be Made.

The commissioners appointed by the county court must make a list of the charges assessed against the lands of each district, and the list must contain a description of each tract assessed, the number of acres in each tract, and the names of the owners of the lands in each tract, if known, and if unknown, the amount of charges assessed against each tract. [L. 1889, p. 27, § 13; B. & C. § 4676.]

§ 6140. Filing List of Charges, Lien on Land Constituted.

The list so made must be filed with the county treasurer of the county, or if the district is partly situated in different counties, then the original list must be filed in the county in which such district was originally created, and copies thereof, certified by the commissioners, must be filed with the treasurer of each of the other counties. From and after the filing of the list, or certified copies thereof, the charges assessed upon any tract of land in said drainage district constitutes a lien upon said tract of land in the county in which said drainage district, or portion thereof, is situated. The list thus prepared must remain in the office of the county treasurer thirty days, or longer if ordered by the board of

trustees, and the board of trustees may extend the time of the payment of the charges assessed against the tracts of land in said drainage district from time to time to conveniently meet the expenses incurred in constructing said drainage system, or keeping the same in repair, and during the time the list so remains, any person may pay the amount of the charges against any tract to the treasurer, without costs, or if so ordered by the trustees, said payments may be made by installments, and the time of paying said installments may be extended from time to time as hereinbefore provided; and if, at the end of thirty days, or of any longer period fixed by the trustees, all of the charges, or all of any of the installments ordered by them, have not been paid, the treasurer, when ordered by the board of trustees, shall return the list, having designated thereon the various tracts, against which there remains unpaid charges, the amount of charges unpaid and the names of the owners thereof, to the district attorney of the county, in which said drainage district is situated, who shall at once proceed by suits in equity to foreclose the liens against the various tracts of land on which there are unpaid charges. The suits to foreclose said liens shall be commenced in the name of the drainage district, the complaints shall be verified by the president, or in his absence by the secretary of the board of trustees, and the procedure shall be the same as in the foreclosure of mortgage liens against real property. At the sale of said tracts the drainage district shall have the right to bid thereat a sum or sums not to exceed the lien charges and costs of foreclosure and sale against any particular tract. The tracts thus sold shall be subject to redemption within the time, manner and provisions of law governing the redemption of real estate sold on execution. In the event any of the tracts sold shall be purchased by the drainage district, and shall not be redeemed as herein provided, then the drainage district may sell and convey said unredeemed tracts, in the name of the drainage district, by order of its board of trustees using the ordinary scroll seal for its signature. Upon the sale of any tract, or tracts, if there be any overplus, after paying all assessments, charges and costs of foreclosure and sale, the overplus shall be deposited with the county treasurer, to be paid by him by order of the court, to the party or parties entitled to the same. [L. 1889, p. 27, § 14; B. & C. § 4677; L. 1911, c. 250, p. 441.]

§ 6141. Work Done Under Direction of Board.

The work must be executed under the dirtction and in the manner prescribed by the board of trustees. [L. 1889, p. 28, § 15; B. & C. § 4678.]

§ 6142. Board Must Keep Accounts.

The board must keep accurate accounts of all expenditures, which accounts and all contracts that may be made by them are open to the inspection of the county court and every person interested. [L. 1889, p. 28, § 16; B. & C. § 4679.]

§ 6143. Trustees May Acquire Property.

The trustees may acquire by purchase, all property necessary to carry out and maintain the system of drainage provided for. [L. 1889, p. 28, § 17; B. & C. § 4680.]

§ 6144. Owners May Drain on Their Own Responsibility, When.

Whenever any district susceptible of one mode of drainage, entirely owned by parties who desire to drain the same, and to manage such drainage without the intervention of trustees or the establishment of by-laws, they may file the petition provided for in Sections 6126 and 6127, and must state therein that they intend to undertake such drainage on their own responsibility. If the petition is granted the owners of the land have all the rights, immunities, and privileges granted to boards of trustees, and in all proceedings the names of the owners may be used instead of the names of the trustees. [L. 1889, p. 28, § 18; B. & C. § 4681.]

§ 6145. Penalty for Injuring or Refusing to Keep Drain Open.

If any person or persons shall willfully fill up, injure, or destroy any drain constructed as herein required, or willfully prevent or delay the construction of any drain in the manner provided in this Act, or shall neglect or refuse to keep the same open, as required by this Act, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof, for the first offense shall be fined, in a sum not less than $25 nor more than $100; and for the second offense shall be fined in a sum not less than $50 nor more than $200; and for each subsequent offense shall be confined in the county jail for not less than thirty days nor more than one year. [L. 1889, p. 28, § 19; B. & C. § 4682.]

§ 5800. Establishing Draining Ditches in Washington County.

Whenever the owners of land in Washington County, adjoining or adjacent to any stream or water course that is not navigable, subject to overflow, shall desire to clear said stream of driftwood or other obstructions to the free flowage of water in the channel thereof, they may petition to the county court for the appointment of three commissioners to examine said stream and the lands adjoining or adjacent thereto subject to overflow, and ascertain the amount and character of such

lands, with their value. The commissioners thus appointed shall establish a drainage district or districts on such stream and the boundaries thereof. They shall then assess and determine the value of all lands subject to such overflow, with the names of the owners thereof, and report their doings to the county court at the next term after their appointment. [L. 1880, p. 53, § 1; H. § 3432; B. & C. § 4369.]

§ 5801. When Draining District May Be Established.

If no remonstrance, signed by a majority of the owners representing a majority value of such lands subject to overflow within the district or districts as established, shall be filed with the clerk of the county court ten days before the next session of said court, the court shall establish said district as a drainage district or districts, designating fully the boundaries thereof, and describing the same by number or name. [L. 1880, p. 53, § 2; H. § 3433; B. & C. § 4370.]

§ 5802. Notice for Election of Supervisor.

Whenever a drainage district is so formed and established, notice shall be given, by posting notices in three of the most public places in said district, that a meeting of the owners of land in said district subject to overflow will be held for the purpose of electing a supervisor of drainage. The notice shall be posted at least ten days before the call for the meeting, and shall state the time and place of such meeting. [L. 1880, p. 53, § 3; H. § 3434; B. & C. § 4371.]

§ 5803. Votes Allowed to Land Owners.

In voting, each land owner shall be allowed one vote for every $10, or fraction under $10 and over $5, of such assessed value of land owned by him, as reported by the commissioners of drainage as provided in Section 5800. All votes shall be recorded, and may be made either in person or by written proxy. [L. 1880, p. 53, § 4; H. § 3435; B. & C. § 4372.]

§ 5804. Election of Supervisors—Special Meetings of Voters.

An annual election shall be held within each drainage district on the first Monday in March of each year, at which the supervisor of drainage shall report all his acts and doings as such supervisor of drainage during his term of office, and if found correct by the land owners, it shall be entered on the minutes of said meeting. Special meetings may be called by said supervisor, or by a majority of the voters in said district, as allowed by Section 5803, to which this is an amendment, at any time, by giving ten days' notice of the time and place and object of such special meeting, by posting three notices of the

same in three public places in said drainage district. [L. 1880, p. 53, § 5; L. 1882, p. 56, § 1; H. § 3436; B. & C. § 4373.]

§ 5805. Supervisors and Secretary, When Elected, Their Duties.

The first and each subsequent annual meeting shall elect a secretary and supervisor of drainage, who shall hold their several offices for one year, and until their successors are elected and qualified. Said officers shall qualify by taking an oath to faithfully discharge the duties of their several offices to the best of their knowledge and ability. The supervisor of drainage shall preside at all meetings of said district, and perform such other duties as shall be required of him by law. The secretary shall keep a record of the proceedings of all general and special meetings, shall file and keep the reports made by the supervisor of drainage, and perform all other duties required of him by law. [L. 1880, p. 53, § 6; L. 1882, p. 56, § 2; H. § 3437; B. & C. § 4374.]

§ 5806. Report to Be Filed With Clerk of County Court.

The secretary shall file a copy of the report of the supervisor of drainage, with a synopsis of the proceedings of each annual meeting, with the clerk of the county court. [L. 1880, p. 54, § 7; L. 1882, p. 57, § 3; H. §3438; B. & C. § 4375.]

§ 5807. Supervisor's Power.

The supervisor of drainage shall have power and it is hereby made his duty, to clear the streams as described in Section 5800, of all drifts, brush and other obstructions to the free flowage of water therein, to construct embankments and fill cuts to prevent overflow, and whatever in his opinion is necessary to the protection of the lands in said drainage district and aid in drainage thereof. He shall be empowered to enter on any lands and use any timber, rock, earth, or gravel necessary, and shall charge up the cost of such work to the district in proportion to the assessed value thereof, as provided in Section 5800. [L. 1880, p. 54, § 8; L. 1882, p. 57, § 4; H. § 3439; B. & C. § 4376.]

§ 5808. Charges, How Enforced.

The charge made by the supervisor of drainage, when found to be correct by a meeting of the land owners, as provided in Section 5804, shall be a charge upon said lands and the owners thereof, and may be collected at civil suit from the personal property of the person in default, if any such is fonud in the county; if not, a filing of the charge with the county clerk shall constitute a lien on the lands of such person in such district, and shall be collected by the sheriff in the same manner as

delinquent school taxes are collected, and when so collected, shall be paid over by the sheriff, after deducting the expenses of collection, to the supervisor of drainage of the proper district, to be expended in the payment of cost of drainage. [L. 1880, p. 54, § 9; L. 1882, p. 57, § 5; H. § 3440; B. & C. § 4377.]

§ 5809. Supervisor to Determine As to Expenditure of Money.

The supervisor of drainage shall determine the time, amount, manner and place of expending labor or money in clearing the streams of driftwood and obstruction in his district, but such expenditures shall in no year exceed the amount of five per cent of the assessed value thereof, as provided in Section 5800. [L. 1880, p. 54, § 10; L. 1882, p. 57, § 6; H. § 3441; B. & C. § 4378.]

§ 5810. Notice of Employment of Labor.

In the employment of labor by the supervisor of drainage, notice of the time and place of doing the work shall be given, either by personal notice to the parties interested, or by posting notices in three of the most public places of the district, at least five days before the work is commenced. [L. 1880, p. 54, § 11; H. § 3442; B. & C. § 4379.]

§ 5811. Bond Required Before Commissioners Appointed.

Upon application being made for the establishment of a drainage district as provided in this Act, the county court shall, before issuing an order to the commissioners, require a bond to be executed with sufficient surety, to be approved by the court, and made payable to the county, in such sums as the court shall direct, and not exceeding $200, conditioned that if the prayer of the petitioners shall be not granted and allowed the person executing such bonds will pay all costs and expenses that may be incurred by reason of such view or review by said commissioners; but when a drainage district is established by the county court, all necessary expenses incurred by the county in establishing said drainage district shall be paid by the land owners of the district so established. [L. 1880, p. 54, § 12; H. § 3443; B. & C. § 4380.]

§ 5812. Notice of Application to Establish Drainage District.

At least ten days before the presenting of the petition for the establishment of a drainage district as provided for in Section 5800, written or printed notices of such petition shall be posted in at least three public places within such contemplated district, and such notices shall contain a true copy of such petition or petitions, and shall state the time it is to be presented to the county court of the county. [L. 1880, p. 55, § 13; H. § 3444; B. & C. § 4381.]

(c) Diking Districts.

§ 6147. County Court Authorized to Maintain Dikes.

The county court of any county in this State shall have power, hereinbefore provided, to regulate the building and maintenance of dikes and dams for the purpose of reclaiming and improving lands subject to tide overflow, or overflow by freshets, and for the purpose of protecting lands from overflow where great damage is liable to be caused thereby. [L. 1895, p. 117, § 1; B. & C. § 4684; L. 1909, c. 146, p. 214, § 1.]

§ 6148. Petition for Diking District, What to Contain, Bond for Expenses.

When one-half or more of the owners of lands which may be conveniently embraced in one diking district subject to overflow by tidewaters or freshets, and who shall represent one-half or more of the area of the lands embraced within the proposed diking district, shall present a petition to the county court of the county in which said lands are situated, reciting therein that it is desired to form a diking district for the purpose of improving by diking or damming the lands contained therein, which are subject to overflow by tidewater, or by freshets, as the case may be, and further giving by legal subdivisions, or by metes and bounds, the description of such lands as are desired to be included in such district, and stating that the petitioners are the owners of one-half or more of the acreage to be embraced in such district, the county court of said county shall consider the petition, and if said court shall find the statements therein are substantially correct, the court shall require the petitioners to give a bond sufficiently to cover the preliminary expenses hereinafter specified. [L. 1895, p. 117, § 2; B. & C. § 4685; L. 1905, c. 199, p. 328, § 1.]

§ 6149. Publication of Petition—Appointment of Viewers.

The county court shall then have the petition published in the official county paper once each week for four consecutive weeks, together with an order, citing all interested parties to appear before the court on a given date, after time of the publication of the notice has expired, and show cause why the petition should not be granted. The court shall appoint three disinterested viewers, non-residents of the proposed district, together with the county surveyor, to view out the proposed dikes and dams, along the most practical route to accomplish the object desired, at the least possible cost and expense; *provided,* that the State Engineer, or a competent representative of his office shall, upon order of the county court, assist the county surveyor in making such survey and plans for the pro-

posed improvement, which order shall be made by the county court, if requested so to do in the petition, and the fees of said State Engineer shall be inculded as a part of the costs of said improvement. [L. 1895, p. 117, § 3; B. & C. § 4686; L. 1909, c. 146, p. 214, § 2.]

§ 6150. Routine of Procedure Similar to That in Establishing Road.

The routine of procedure under this Act shall be as far as practicable the same as prescribed by the road law of the State for survey, location, and establishment of county roads. The surveyors and viewers appointed shall meet, as prescribed by the county court. They shall trace upon the ground the line of the dikes and dams necessary, and shall keep an accurate record of the magnetic bearings and the distances upon the same. They shall designate the width of the right of way through which the dikes and dams shall pass, which right of way, should the petition be granted, shall be the property of the district in so far as is necessary for the purpose of building and maintaining the works. The surveyors and viewers shall also define the boundaries of the district, and make an accurate list of the landowners within the same, and their lands by legal subdivision embraced therein. They shall further make plans for, and estimate the cost of the proposed dikes and dams, and shall file with the county clerk at least one week before the day set for a hearing, a complete report of their works, and their report shall be open to public inspection. [L. 1895, p. 117, § 4; B. & C. § 4687.]

§ 6151. Proceeding Upon Hearing on Petition.

At the time advertised for a hearing of interested parties, the court may postpone such hearing as may be necessary in order to allow the viewers more time in which to report, or for other good causes. Upon the day of final hearing, should the county court, from the report of the viewers and the testimony of interested persons believe that the benefits to be derived from forming a diking district are not sufficiently great to justify the expenditure which will be incurred, then the petition and report shall be dismissed at the cost of the petitioners. Should the court believe that the proposed improvement will be for the general public good, and that the increase in the taxable value of the land will be greater than the cost, or that destruction of or damage to property equal to the cost will be prevented, the petition shall be granted and the district formed, a number given by which it shall be designated in future proceedings, the report of the viewers adopted and incorporated in the court records, and the cost of the preliminary work assessed upon the district. [L. 1895, p. 118, § 5; B. & C. § 4688; L. 1909, c. 146, p. 214, § 3.]

§ 6152. Laws Applicable.

That Sections 6148, 6150, 6153, 6154, 6155, 6156, 6157, 6158, 6159, 6160, 6161, and 6162 be and the same are hereby made applicable to all proceedings commenced under this act, and all such proceedings shall be commenced and prosecuted in accordance therewith, except as particularly otherwise provided in this Act. [L. 1907, c. 146, p. 215, § 4.]

§ 6153. Apportioning Estimated Cost—Money Collected Special Fund.

After the petition has been granted and the proceedings had as in this Act specified, the court shall apportion the estimated cost of the dikes and dams among the landowners of the proposed district, in proportion to the valuation of the lands therein, according to the estimated value which shall be placed upon the respective tracts by the viewers mentioned in this act. The cost thus apportioned shall be a tax upon the land and shall be placed upon the assessment roll of said county for the current year; and such taxes for said diking purposes shall have the same legal effect and be collected in a like manner as other State and county taxes upon the assessment roll, and the moneys collected on the assessment for said diking purposes shall be paid to the county treasurer and by him held as a special fund for the credit of said diking district, to be paid out in accordance with the provisions hereinafter specified. [L. 1895, p. 118, § 6; B. & C. § 4689; L. 1905, c. 199, p. 329, § 2.]

§ 6154. Advertisement for Bids for Work; Contracts Therefor.

When the tax has been collected or the application filed as in this section provided, the county court shall advertise for bids on the proposed work, either as a whole or in parts, as may be deemed most economical. The advertisement for bids shall be published in the official county paper once each week for two successive weeks previous to letting the contracts. The contracts shall be drawn in such terms as will insure the district against loss, and a bond required of the contractor such as will insure the completion of the work in case of the contractor's failure to comply with his agreement. No contract shall be awarded which calls for an expenditure of a sum of money greater than the tax levied for the purpose; *provided,* that the difference may be made up by personal subscriptions; *and provided also,* the court may modify the plan so as to bring the cost of work within the tax levy, if such modification can be made without material detriment to the improvements; *provided, however,* that after said assessments have been made, it shall be lawful for the owner of any property so assessed for such improvement in a sum not less than $50 at any time within ten days, after the cost of such diking district shall have

been apportioned, to file with the clerk of the court of said county a written application to pay said assessments in installments, and such written application shall state that the applicant and property waives all irregularities or defects, jurisdictional or otherwise, in the proceedings to create said diking district, and in the assessments therefor and apportionment of such costs. Said application shall contain a provision that the applicant and property owner agrees to pay said assessment in five annual installments with interest at the rate of six per cent per annum, but no such application shall be received and accepted where the assessment exceeds the assessed valuation of said property on the tax roll of said county. Such installments shall be paid annually from the time of the apportionment of said costs, and in case of default in the payment of any installment for a period of twenty days after the same becomes payable, the whole of the remaining unpaid sum shall be collected as a tax against the property assessed for the same. [L. 1895, p. 118, § 7; B. & C. § 4690; L. 1905, c. 199, p. 329, § 3.]

§ 6155. Advisory Board and Superintendent.

Within ten days after the petition has been granted, petitioners shall call a meeting of the land owners of the district, to be held in said district at a time and place by them designated, for the purpose of choosing three of said land owners as an advisory board and nominate one of the land owners of said district for superintendent of said district. Notice of said meeting to be signed by at least three of said petitioners and posted in three public places in said district five days before the date of said meeting. One-half of the land owners in said district being the record owners of at least two-thirds of the number of acres of land therein shall constitute a quorum competent to transact business. At said meeting, and at subsequent district meetings, each of said land owners present shall be entitled to one vote for each acre of land in said district of which he shall at the time be the record owner.

The first, and all subsequent meetings, shall be organized by selecting a chairman and secretary. The secretary shall certify all proceedings taken and file the same with the county court of said county within five days after any meeting.

It shall be the duty of the advisory board to assist the superintendent with its advice and counsel concerning the necessity of work and the manner thereof and in the repair and maintenance of the dikes and dams in the district.

The members of the advisory board shall hold office until the next annual meeting and until their successors shall have been elected and qualified.

There shall be an annual meeting of the land owners of the district held on the first Monday in November of each year, at the hour of 11 o'clock in the forenoon, at which time, or at an adjourned meeting thereof, three land owners of the district shall be chosen for the advisory board; and a superintendent shall be nominated for the next calendar year, and his selection certified to the county court on or before the 1st day of January each year.

The county court shall appoint for superintendent of dikes in each district the person so nominated by the land owners of the district.

Should the district fail to file with the county court, as heretofore specified, a certificate of the nomination of a superintendent, then the county court shall make its own selection from the land owners in said district and appoint him superintendent. In either case the superintendent shall serve until the next annual appointment and until his successor shall be appointed, subject to removal by the court for neglect of duty, incapacity or other good cause; *provided*, in case of vacancy in the superintendent's office the county court may, on consultation with the advisory board, fill the vacancy until the next annual selection.

The superintendent shall receive such pay for his services as the court may allow, but shall be paid only for the time actually employed, and in no case shall the rate of pay exceed that allowed the county surveyor.

The superintendent shall oversee the construction and repair of dikes and dams, and shall see that all contracts are faithfully executed, and the work done in a thorough manner. After the dikes are completed the superintendent shall have the power to employ the labor necessary to maintain them at the usual rate of wages allowed to laborers on the county road; *provided*, that in an emergency the county court may allow a higher rate of wages; *and provided further*, that the county court may with the approval of the advisory board allow work on maintenance to be done by contract.

The superintendent shall also, between the 1st and 15th days of December in each year, file with the county court an estimate of the money required for the maintenance of the dikes and dams for the succeeding year; and such estimates added to any indebtedness there may be against the district shall be the basis of the tax for next year. The advisory board also shall file with the county court, on or before said 15th day of December in each year, an estimate of the money required for the maintenance of the dikes and dams for the next succeeding year with a statement of the work, in its opinion, required to be done, which estimates the court may

consider in making its levy. [L. 1895, p. 119, § 8; L. 1905, c. 199, p. 330, § 4; L. 1913, p. 503, c. 264.]

§ 6156. Bills, How Indorsed and Paid—Warrants Receivable for Taxes.

All bills against the district for labor performed, material furnished, or on other accounts, shall first be indorsed by the superintendent , and when approved by the county court, shall be paid by a warrant drawn by the county clerk upon the fund of the district upon deposit with the county treasurer. The clerk shall keep a separate account of all warrants drawn by him upon the fund of the district, giving the date of the warrant, the number and the account for which drawn. All warrants drawn upon the fund of the district shall be receivable for taxes due on account of that fund. The warrants shall be subject to the same regulations in reference to payment and interest as are warrants drawn upon the general fund of the county. [L. 1895, p. 119, § 9; B. & C. § 4692.]

§ 6157. Damages, Claim and Assessment for and Payment.

If, in locating and establishing the dikes and dams provided for in this act, the owner or owners of land through which they pass feel aggrieved on the score of right-of-way or other causes, he shall have proper damage. In such cases claims for damages shall be filed, and the amount thereof determined in accordance with the general road law in like cases. The damages allowed shall be assessed against the lands of the district in the same manner as the tax for construction, and paid to the aggrieved parties in the same manner in which other claims are paid. [L. 1895, p. 120, § 10; B. & C. § 4693.]

§ 6158. Lands Already Diked, Owners May Organize Districts.

Owners of land already diked may organize districts for the repairs and maintenance of the dikes and dams thereof by complying with the routine of procedure as prescribed in this act. Except, that the petition need not be signed by more persons than the owners of more than one-half of the acreage embraced in the limits of the proposed district. The board of viewers shall provide for placing the dikes and dams in thorough repair and up to a uniform standard, and shall levy the cost of such repairs in the first instance, not upon the assessed valuation of the lands, but in proportion to the benefits conferred. The value of the dikes and dams as they stand shall be estimated and due credit given to the lands which have borne the original cost of construction; *provided,* such credit shall entitle the land to no consideration greater than release from the cost of repairs in the first instance. [L. 1895, p. 120, § 11; B. & C. § 4694; L. 1909, c. 74, p. 131, § 1.]

§ 6159. Term "Lands" Used in Reference to Taxation Does Not Include Improvements.

When the term "lands" is used in this Act in reference to taxation it shall not be held to include improvements thereon; but the roadbed of railway lines within diking districts shall be subject to taxation for diking purposes. [L. 1895, p. 120, § 12.]

§ 6160. Rights of Way May Be Vacated.

The county court shall have power to vacate the right-of-way through which the dikes and dams pass, in the same manner in which county roads are vacated, and the right-of-way shall thereon revert to the original owner. [L. 1895, p. 120, § 13; B. & C. § 4696.]

§ 6161. Appeals May Be Taken From Action of County Court.

Appeals may be taken from the action of the county court in carrying out the provisions of this act in like manner as appeals are provided for under the road law; and any judgment resulting therefrom shall be an expense upon the district, and not upon the conuty, and shall be provided for in the tax levy upon the district. [L. 1895, p. 120, § 14; B. & C. § 4697.]

§ 6162. Diking Line May Be Changed.

Any person through whose lands dikes shall have been constructed under this act may be allowed to construct a dike upon new lines between any two points on the original line. In such case the owner shall file application with the county court, giving a plat of the proposed change, and indorsed by the superintendent of the district. If the court is satisfied that the change is not detrimental to the district, the application shall be granted. The applicant shall construct the new dike at his own expense, and up to the standard of the original, of which fact the superintendent shall be the judge. The dike thus constructed shall become the property of the district in the same manner as the original, and subject to the same regulation, and the right-of-way of the original dike thereon becomes vacated. [L. 1895, p. 120, § 15; B. & C. § 4698.]

(*d*) Funding the Indebtedness of Drainage and Diking Districts.

§ 6163. When Board of Trustees of Drainage District May Issue Funding Bonds.

The board of trustees of any drainage or levee district having an outstanding indebtedness of not less than $3.00 per

acre for each acre of land included in such district, evidenced by bonds or warrants of such district are emopwered, if they deem it for the best interests of such district, to fund or refund the same or any part thereof and issue bonds of such district therefor in sums of not less than $100 nor more than $1,000 each, having not more than twenty years to run, and bearing a rate of interest not exeeeding seven per centum per annum, payable semi-annually, which bonds shall be negotiable in form to be selected by said board of trustees, numbered consecutively, signed by the president of the board and countersigned by the clerk of the county, who shall thereto affix his official seal, and interest coupons shall be attached to each bond, and the same shall then be delivered to the treasurer of said district, who shall stand charged with the same upon his official bond for all bonds delivered to him and the proceeds thereof. [L. 1909, c. 133, p. 200, § 1.]

§ 6164. Bonds to Be Exchanged for Indebtedness or Sold—Record Kept.

The board of trustees shall sell or exchange the bonds so issued, on the best available terms, for any legal indebtedness of such district, and if such sale shall be made for money, the proceeds thereof shall be applied to the payment of liabilitiees existing against said district at said time. When they are exchanged for bonds or warrants or other legal evidence of district indebtedness, the treasurer shall at once cancel such evidence of indebtedness by indorsing thereon the amount for which they were received, the word "canceled" and the date of cancellation. Said treasurer shall keep a record of all bonds issued, sold, or exchanged, as aforesaid, by number, date of sale, amount, date of maturity, the name and postoffice address of the purchasers, and if exchanged, what evidence of indebtedness was received therefor, which record shall be open at all times for public inspection. [L. 1909, c. 133, p. 200, § 2.]

§ 6165. Tax to Pay Interest and Sinking Fund.

The board of trustees shall cause to be levied and assessed each year upon the assessable property of the district, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the prvoisions of this Act, accruing before the next annual levy, and such proportion of the principal as in their judgment will be for the best interest of said district, to create and raise a sinking fund to retire said bonds and to be used for no other purpose whatever. [L. 1909, c. 133, p. 200, § 3.]

§ 6166. Notice of Redemption of Bonds From Sinking Fund.

Whenever there shall be in the said sinking fund of such district a surplus of $500 or more, over and above the interest maturing before the next levy, the treasurer shall give notice for two weeks in one or more newspapers of general circulation, printed and published in the county in which such district was first organized, stating the amount of such surplus, and that on the day and hour named in such notice, sealed propositions will be received at his office for the surrender of bonds of the district and shall, at the time and place named, open the propositions and accept the lowest bid; *provided,* that na bid shall be accepted for an amount exceeding the par value of such bonds with accrued interest thereon and five per cent premium, and if bids are not offered at said figure, or less, sufficient to exhaust the amount of the surplus on hand, the board of trustees may then call in any bond or bonds of said district, giving the numbers thereof in the exact order of their issuance, beginning with the lowest or first number, and redeem the same at the par value and five per cent premium with accrued interest to date of such recall, and thereafter interest thereon will cease and the amount due thereon will be set aside for the payment of such bond or bonds whenever presented. [L. 1909, c. 133, p. 201, § 4.]

(*e*) Artesian Wells.

§ 6232. County Courts to Locate Sites for Artesian Wells.

The county court of any county in this State shall have power as hereinafter provided to locate sites for artesian wells upon lands to be benefited thereby within the limits of their respective counties. [L. 1909, c. 69, p. 119, § 1.]

§ 6233. Petition for Creation of District—Boundaries, How Determined.

Whenever the majority of the owners of real estate representing also the majority of the number of acres of land of any proposed district in any county in this State desire to bore for the purpose of securing artesian water, they shall present a petition to the county court of the county asking the county court to create a district large enough to include land owned by all such petitioners where such district is proposed to be created; which petition shall describe by land subdivisions or metes and bounds, as the case may be, the exact number of acres in such proposed district, and shall also show the assessed value as assessed by the county assessor at the last annual assessment,and shall also propose the number of mills to be levied for the purpose of securing said

artesian well; *provided*, the county court shall, upon the objection of the owner of any land within the proposed district naturally or artificially irrigated or having thereon springs, lakes, streams, or other water courses, from which the same can be supplied with water, exclude such land therefrom; *and provided*, such district shall be as compact in form as practicable. [L. 1909, c. 69, p. 119, § 2.]

§ 6234. Court May Order Election.

When said petition is filed, the county court shall thereafter, at its regular session, or at any special session called for that purpose, if upon thorough examination such court shall find the petition to be regular, order an election in said district, naming the place of election and time when said election shall be held; *provided*, that said election shall not be held until after notice thereof is given as hereinafter provided. [L. 1909, c. 69, p. 120, § 3.]

§ 6235. Notices of Election, Form and Service.

At least thirty days previous to any election hereunder the county court shall deliver to the sheriff of the county at least five notices of the election to be held in any county or in any proposed district in any county voting on the question. Said notices shall be substantially in the following form:

ARTESIAN WELL ELECTION NOTICE.

Notice is hereby given that on———, the————day of———, 19—, at the———in the county of———, an election will be held to determine whether the owners of real estate within the following described bounds (here insert the description of the proposed district), desire to bore within the said prescribed bounds for the purpose of securing artisian water, which said election shall be held at———o'clock in the morning, and will continue until———o'clock in the afternoon of the said day.

Dated this———day of———, 19—.

————— —————,

County Clerk of———County, Oregon.

It shall be the duty of the sheriff at least thirty days before any election hereunder to post said notices in public places within said proposed district, one of which said notices shall be posted at the place designated by the county court as the polling place. [L. 1909, c. 69, p. 120, § 4.]

§ 6236. Ballots.

Before the said election it shall be the duty of the county clerk to arrange the ballots and have them printed in substantially the following form:

BALLOT UPON THE QUESTION OF BORING FOR ARTESIAN WATER.

(Date of election.)

Vote for or against boring for artesian water.
Mark X between number and answer voted for.

12. For artesian well tax—Yes.
13. For artesian well tax—No.

[L. 1909, c. 69, p. 120, § 5.]

§ 6237. General Election Laws Apply.

In all elections hereunder and in all matters and proceedings not herein specified the provisions of the general election laws of the State shall apply so far as the same is applicable. [L. 1909, c. 69, p. 120, § 6.]

§ 6238. Levy of Taxes—State Engineer to Be Consulted As to Location—Contract With Land Owner.

Within thirty days after such election the county court at a regular or special session called for that purpose shall canvass the vote, and if it be found that a majority of the votes cast are in favor of the tax for boring for artesian water, they will then place in the next general levy the number of mills necessary to create such tax upon the assessed value of the property within the district, which levy shall be included in and become a part of the general tax levy upon the real property within the district. After fifty per cent of the special tax has been paid into the county treasury the county court shall call into consultation the State Engineer, who, together with the county judge and county commissioners, shall proceed to locate the well in the proposed district, which shall be ascertained in the following manner:

1. Centralization of location;
2. Location with reference to altitude and the possibilities of its serving the greatest number of people within the district, providing the well is a success;
3. Location relative to indications for securing such water;
4. After ten days' notice by posting in three conspicuous places within the district, bids from the various property owners as a bonus for location, providing the well is a success;
5. Location with reference to bids for the well if it is not artesian, providing it furnishes a sufficient supply of water by pumping for the land upon which it is located.

After taking into consideration the above inducements and consulting the State Engineer as to the most advantageous point, and taking into consideration the amount of money to be paid for the same, the county judge, with the county commissioners, shall decide upon the point of location, and such well shall be located at such point so selected; *provided*, the

party owning the land shall at once enter into a contract with the county judge and the county commissioners permitting them to enter upon such lands, giving them good and sufficient room for their drills, wells, machinery, camps, stables, and residences until such well is completed, and if such owner refuses to enter into such a contract, then such well shall be placed at the next most advantageous point selected by said county court, where the owner of such land is willing to enter into such a contract with said court; and the county court is hereby authorized to enter into a contract with the party offering the bonus for the location of said artesian well. [L. 1909, c. 69, p. 121, § 7.]

§ 6239. Reservations for Public Uses.

Whenever a contract is entered into by the county court within a district or with any person under the provisions of this Act, the county court shall at the same time, and in a manner not inconsistent with the other provisions of this Act, reserve for the benefit of the public the right, in case such artesian well is a success and artesian water is found, to appropriate sufficient water from said well for the purpose of the watering of the live stock and for such other uses as may by said court be deemed essential; but such intention to so appropriate shall be made by said county court, and any contract or agreement made under Section 6238 shall be made with reference to such specified reservation and right of appropriation by said county court for public uses. [L. 1909, c. 69, p. 121, § 8.]

§ 6240. Regulations for Distribution of Water.

Whenever a tax is levied and a well bored under the provisions of this Act, and such well is a success, the county court shall adopt such rules and regulations governing the distribution of water as may be deemed for the best interest of the whole district wherein such well is situated for the general supervision and control of such wells and the waters flowing therefrom; *provided,* that such regulation, supervision, and control shall not be inconsistent with any contract or agreement entered into by said county court with any individual as provided for in Section 6238. [L. 1909, c. 69, p. 122, § 9.]

§ 6241. Artesian Well Defined.

For the purpose of this Act an artesian well is defined to be any artificial hole made in the ground not less than six inches in diameter at the bottom, through which water naturally flows from subteranean sources to the surface of the ground for any length of time. [L. 1909, c. 69, p. 122, § 10.]

§ 6242. Land Not to Be Taxed Twice Within Year.

After any tract of land has been taxed under the provisions of this Act no other tax shall be levied against said lands under the provisions of this Act within one year after such first levy for the location of a second well or adjacent wells. [L. 1909, c. 69, p. 122, § 11.]

§ 6243. None But Land Owner May Vote.

No person shall be allowed to vote at any election held under the provisions of this Act who is not an owner of real estate in the district proposed to be created. [L. 1909, c. 69, p. 122, § 12.]

§ 6244. Disposition of Unused Residue of Tax Money.

Should any balance in excess of $1,000 be left of the money collected by the county treasurer, or of the moneys collected for such bonus as mentioned in Section 6238 and not otherwise expended in perfecting any artesian well, then the same shall be credited the following year to the general taxes of such property as has paid the special tax collected under the provisions of this Act in proportion to the assessed value when such levy was made. If the sum should be $1,000 or less, then the balance of said fund shall be turned over to the county court to be expended upon the highways within such artesian well district. [L. 1909, c. 69, p. 122, § 13.]

(*f*) District Improvement Act.

Section 1. Any number of landowners not less than three may incorporate themselves for the purpose of irrigating or draining or irrigating and draining their land in the manner provided in this Act.

Section 2. Such persons shall make and subscribe written articles or incorporation in triplicate and acknowledge the same before some officer authorized to take the acknowledgement of deeds, and file one of such articles in the office of the Secretary of State, another in the county clerk's office of the county or counties where the land incorporated is situated, and retain a third in the possession of the corporation.

Section 3. The articles of incorporation or a certified copy of the one filed with the Secretary of State or county clerk, shall be *prima facie* evidence of the existence of such corporation.

Section 4. The articles of incorporation shall specify:

1. The name assumed by the corporation and by which name it shall be known, which name must include the words

"District Improvement Company," and the duration of the same.

2. The particular land to be improved by the works of the company, describing said land by legal subdivisions so far as possible and setting forth the names of the owners thereof and the total number of acres.

3. In general but clear language, the purpose and intent of the corporation and describe in general language the proposed plan of improvement whether of irrigation or drainage or both.

4. The number of directors not less than three nor more than nine and the names of those first holding such offices and the mode and times of the election of their successors in office.

5. The location of the principal office of the corporation for the transaction of business which must be in a county where at least a portion of the land to be improved is situated.

Section 5. Upon the filing of said articles of incorporation, the owners of all the land described in said articles of incorporation shall make, subscribe and acknowledge, before some person authorized to take the acknowledgement of deeds, a notice to whom it may concern that the lands described in said notice will be improved by irrigation or drainage or both by said corporation under the provisions of this Act. Said notice shall be recorded in the office where deeds and other instruments affecting the title to real property are recorded, of the county or counties where the land is situated. From and after the recording of said notice all the debts and obligations of said corporation theretofore or thereafter created shall be a lien upon all the land described in said notice prior to every lien attaching to said land subsequent to the date of recording said notice, except State, county and school taxes, whether such debt or obligation of said corporation be in existence at the time such later lien attaches, or be created afterwards; and said lien shall not be personal, but shall be an obligation upon the land and shall run with the land.

Section 6. Every owner of land described in said articles of incorporation is a member of said corporation and said membership is lost or gained through the respective sale or purchase of any of said land as the case may be. At all meetings of the members of said corporation, each member who shall attend in person or by proxy, appointed in writing, shall be entitled to one vote for each acre of said land so owned by him. A majority vote shall govern in all cases except as otherwise specially provided by law. At any meeting of the members of the corporation any officer may be removed and another elected in his place. There must be at least one regular meeting of the members in each year and there shall be such other meetings as

may be called under the provisions of the by-laws of the corporation.

Section 7. Upon making and filing the articles of incorporation and recording of the notice, as herein provided, the persons appointed in said articles as directors and their successors in office, associates and assigns, by the name assumed in such articles shall thereafter be deemed a body corporate with power—

1. To sue and be sued.
2. To contract and be contracted with.
3. To have and use a corporate seal and the same to alter at pleasure.
4. To purchase, condemn by the power of eminent domain, possess and dispose of such real and personal property as may be necessary and convenient to carry into effect the objects of the incorporation, and to take, hold and possess and dispose of all real and personal property donated to such corporation by the United States or by any state, territory, county, city or other municipal corporation or by any person, firm, association or private corporation, for the purpose of aiding in the objects of such corporation.
5. To appoint such subordinate officers, employees and agents as the business of the corporation may require and prescribe their duties and compensation.
6. To make, establish or amend by-laws, rules and regulations, not inconsistent with the laws of the State, and the articles of incorporation, prescribing the manner and mode of conducting the business of the corporation, distributing and using water in irrigation, usage of any drainage works, and enforcing the collection of rates, tolls, charges, fees, fines and assessments, but such by-laws, rules and regulations must be ratified by two-thirds of the votes of the members of said corporation.
7. To prescribe, fix, make, assess and charge and collect rates, tolls, fees, fines, and charges for the use of water, or for the use of any of the irrigation or drainage works of the company, or for the violation of any of the by-laws, rules and regulations of the company and such rates, tolls, fines, fees and charges shall be a lien on the crops produced as prescribed in Section 6544 of Lord's Oregon Laws, and also upon the land to which the water or drainage was furnished.
8. To make, levy and collect an assessment or assessments either ratably, or in proportion to the benefits received as the by-laws may provide upon the lands described in the articles of incorporation for the purpose of paying any or all of the expenses, debts or obligations of the company; *provided*, that in no case shall there be more than one assessment paid upon any lands in any one year.

Section 8. No person is eligible to the office of director unless he is a member of the corporation. The directors when elected and qualified, shall meet and organize and elect one of their number president, who shall preside at their meetings and at the meetings of the members. They shall appoint a secretary who shall keep a fair and correct record of all the official business of the corporation. From the first meeting of the directors, the powers vested in the corporation are exercised by them or by their officers or agents under their direction except as otherwise specially provided by law.

Section 9. The rates, tolls, fees, charges, fines and assessments for any one year shall become due and payable on or before the first day of October of said year, or as provided by the by-laws of the corporation, and the lien of the same upon any of the lands described in the articles of incorporation may be enforced and foreclosed by a suit in equity and upon the sale of said land on such foreclosure the corporation or any member thereof may be a bidder and purchaser.

Section 10. At the first or subsequent meeting of the members of the corporation, said members by resolution shall designate and authorize the expenditure of a certain amount of money for preliminary investigation and report upon the plans and cost of construction of the irrigation or drainage system as the case may be. The directors shall then secure a competent engineer who shall make such investigation, and draw detailed plans and specifications and make a report upon the same, including an estimate of the probable cost of construction. Such plans and specifications and report shall be submitted to a meeting of the members of said corporation for adoption. Such adoption must be made by resolution passed by a two-thirds vote. If said plans, specifications and report are adopted, said meeting shall then pass a resolution authorizing the issue of bonds in a certain sum. Said sum designated shall not be less than one hundred twenty per centum of the estimated cost of construction as shown by said adopted report. A certified copy of said resolution shall be recorded in the office of the county or counties in which the land is situated, where deeds to real property are recorded. Being so authorized, the board of directors may issue and sell bonds of the corporation at such times and in such amounts as may be necessary not exceeding the total authorized amount. Said bonds shall be in denominations of five hundred dollars, or of one thousand dollars. They shall bear interest from date of issue at not more than six percentum per annum, payable semi-annually on the first day of May and November of each year, and shall run from ten to twenty years from date of issue; *provided,* that after said bonds have run for ten years said corpo-

ration shall pay at least one-tenth of said bond issue annually until all of said bonds are paid. Said bonds thus paid shall be paid on interest paying dates. Said bonds shall not be sold for less than ninety per centum of their face value. If said bonds are received in payment of any obligation of the corporation they shall be received at face value plus accrued interest. Said bonds shall be numbered consecutively and the lowest numbers paid off first, and may be issued all at the same time or in such amounts as the board of directors deem necessary. If the bonds first sold be not sufficient to complete the construction of the works, another issue of a definite amount may be authorized by a two-thirds vote of the members.

Section 11. The articles of incorporation of any corporation organized under this Act may at any time be amended so as to include other land, or exclude any part theretofore included. Such amendment shall not effect the date of priority of the lien of said corporation upon any land but as to any new land included by such amendment the lien shall attach from the date of the recording of the amended notice; no land can be excluded until its proportionate share of all existing debts of the corporation has been paid.

Section 12. Every corporation organized under the provisions of this Act shall pay to the Secretary of State, upon presentation of its articles of incorporation for filing an organization fee, and shall at the same time pay the annual license fee hereinafter provided for the succeeding fraction of a fiscal year. The organization fee hereinbefore mentioned shall be two dollars for every thousand acres or fraction thereof described in the said articles of incorporation. The license fee hereinbefore mentioned shall be two dollars for every thousand acres or fraction thereof described in the said articles of incorporation, and after the first payment thereof to the Secretary of State as above set forth shall be paid each year in advance to the State Treasurer as other corporate license fees are paid. [L. 1911, c. 172, p. 256.]

The validity of a district improvement corporation cannot be questioned in a suit to restrain the issuance of bonds by it since the existence of a *de facto* corporation organized to carry on business as such cannot be collaterally attacked by a private person. (*Tyree* v. *Crystal Dist. Improvement Co.*, 126 Pac. 605.)

PART IV.

FEDERAL STATUTES AND STATE DESERT LAND LAWS.

(a) Recognition of Existing Water Rights.

Federal Statutes Recognizing Vested and Accrued Water Rights.

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. [Section 2339, Act of July 26, 1866, c. 262, 14 Stat. L.]

The above section of the federal statute constituted a recognition of pre-existing rights rather than an authorization of the creation of new ones. Prior to the passage of this act or any laws upon the subject, water from streams flowing through the public domain had been diverted and used for the purposes specified in the act, and priority in the diversion and use determined the rights of conflicting claimants. This procedure was acquiesced in by the government by tacit consent, and the foregoing act was in recognition of the rights which had been acquired thereby to the use of water for the purposes specified in that act: *Davis* v. *Chamberlain*, 51 Or. 304; *Broders* v. *Water Company*, 101 U. S. 274; *United States* v. *Rio Grande Company*, 174 U. S. 690; *Gutierres* v. *Albuquerque Land Company*, 188 U. S. 545; *Hough* v. *Porter*, 51 Or. 387.

"In this State, the doctrine of the right to water by prior appropriation for mining or irrigating lands has not been adopted or applied except as the parties have acquired their rights under the act of Congress of 1866." *Simmons* v. *Winters*, 21 Or. 42; *Carson* v. *Gentner*, 33 Or. 512.

Patents Granted Subject to Certain Rights.

All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section. [Section 2340, Act of July 9, 1870, c. 235, 16 Stat. L. 218.]

(b) Dam Act of 1910.

Water Power Projects on Navigable Waters.

Section 1. That when authority has been or may hereafter be granted by Congress, either directly or indirectly or by any official or officials of the United States, to any persons, to construct and maintain a dam for water power or other purpose

across or in any of the navigable waters of the United States, such dam shall not be built or commenced until the plans and specifications for such dam and all accessory works, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such dam and the accessory works; and when the plans and specifications for any dam to be constructed under the provisions of this Act have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans or specifications either before or after completion of the structure unless the modification of such plans or specifications has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War; *provided,* that in approving the plans, specifications, and location of any dam, such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that the persons constructing or maintaining such dam shall construct, maintain, and operate without expense to the United States, in connection with any dam and accessory or appurtenant works, a lock or locks, booms, sluices, or any other structure or structures which the Secretary of War and the Chief of Engineers or Congress at any time may deem necessary in the interests of navigation, in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock or other structures for navigation purposes in connection with such dam, the persons owning such dam shall convey to the United States, free of cost, title to such land as may be required for such construction and approaches, and shall grant to the United States free water power or power generated from water power for building and operating such constructions; *provided further,* that in acting upon said plans as aforesaid the Chief of Engineers and the Secretary of War shall consider the bearing of said structure upon a comprehensive plan for the improvement of the waterway over which it is to be constructed with a view to the promotion of its navigable quality and for the full development of waterpower; and, as a part of the conditions and stipulations imposed upon them, shall provide for improving and developing navigation, and fix such charge or charges for the privilege granted as may be sufficient to restore conditions with respect to navigability as existing at the time such privilege be granted or reimburse

the United States for doing the same, and for such additional or further expense as may be incurred by the United States with reference to such project, including the cost of any investigations necessary for approval of plans and of such supervision of construction as may be necessary in the interests of the United States; *provided further,* that the Chief of Engineers and the Secretary of War are hereby authorized and directed to fix and collect just and proper charge or charges for the privilege granted to all dams authorized and constructed under the provisions of this Act which shall receive any direct benefit from the construction, operation and maintenance by the United States of storage reservoirs at the headwaters of any navigable streams or from the acquisition, holding, and maintenance of any forested watershed, or lands located by the United States at the headwaters of any navigable stream wherever such shall be, for the development, improvement, or preservation of navigation in such streams in which such dams may be constructed.

Section 2. That the right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built in accordance with the provisions of this Act, a suitable lock or locks, booms, sluices, or any other structures for navigation purposes, and at all times to control the said dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation.

Section 3. That the persons constructing, maintaining, or operating any dam or appurtenant or accessory works, in accordance with the provisions of this Act, shall be liable for any damage that may be inflicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam, or accessory works, subject to the provisions of this Act, shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce and Labor shall prescribe, and for failure so to do in any respect shall be deemed guilty of a misdemeanor and subject to a fine of not less than five hundred dollars, and each month of such failure shall constitute a separate offense and subject such persons to additional penalties therefor.

Section 4. That all rights acquired under this act shall cease and be determined if the person, company, or corporation acquiring such rights shall, at any time, fail, after receiving reasonable notice thereof, to comply with any of the provisions and requirements of the Act, or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War, including the

payment into the Treasury of the United States of the charges provided for by section one of this Act; *provided*, that Congress may revoke any rights conferred in pursuance of this Act whenever it is necessary for public use, and, in the event of any such revocation by Congress, the United States shall pay the owners of any dam and appurtenant works built under authority of this Act, as full compensation, the reasonable value thereof, exclusive of the value of the authority or franchise granted, such reasonable value to be determined by mutual agreement between the Secretary of War and the said owners, and in case they cannot agree, then by proceedings instituted in the United States Circuit Court for the condemnation of such properties; *and provided also*, that the authority granted under or in pursuance of the provisions of this act shall terminate at the end of a period not to exceed fifty years from the date of the original approval of the project under this Act, unless sooner revoked as herein provided, or Congress shall otherwise direct; *provided, however*, that this limitation shall not apply to any corporation or individual heretofore authorized by the United States, or by any state, to construct a dam in or across a navigable waterway, upon which dam expenditures of money have heretofore been made in reliance upon such grant or grants.

Section 5. That any persons who fail or refuse to comply with the lawful order of the Secretary of War and the Chief of Engineers, made in accordance with the provisions of this Act, shall be deemed guilty of a violation of this Act, and any person who shall be guilty of a violation of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exeeeding five thousand dollars, and every month such persons shall remain in default shall be deemed a new offense and subject such persons to additional penalties therefor; and in addition to the penalties above described, the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such dam and accessory works to comply with any lawful order issued by the Secreatry of War or Chief of Engineers in regard thereto, cause the removal of such dam and accessory works as an obstruction to navigation at the expense of the persons owning or controlling such dam, and suit for such expenses may be brought in the name of the United States against such person and recovery had for such expense in any court of competent jurisdiction. Said provision as to recovery of expenses shall not apply wherever the United States has been previously reimbursed for such removal; and the removal of any structures erected or maintained in violation of the provisions of this Act or the order or direction of the

Secretary of War or the Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this Act, the cause or question arising may be tried before the circuit court of the United States in any district in which any portion of said obstruction or dam touches.

Section 6. That whenever Congress shall hereafter by law authorize the construction of any dam across any of the navigable waters of the United States, and no time for the commencement and completion of such dam is named in said Act, the authority thereby granted shall cease and be null and void unless the actual construction of the dam authorized in such Act to be commenced within one year and completed within three years from the date of the passage of such Act.

Section 7. That the right to alter, amend, or repeal this Act is hereby expressly reserved as to any and all dams which may be constructed in accordance with the provisions of this Act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any dam which shall have been constructed in accordance with its provisions.

Section 8. That the word "persons" as used in this Act shall be construed to impart both the singular and the plural, as the case demands, and shall include corporations, companies, and associations. The word "dam" as used in this Act shall be construed to import both the singular and the plural, as the case demands. [Dam Act of June 23, 1910, c. 360, p. 593; 2d Sess., 61st Cong.; amending A. C. June 21, 1906, 34 Stat 386.]

(*c*) Desert Land Act of 1877.

(Act of March 3, 1877, c. 107, 19 Stat. L. 377.)

§ 1. Reclamation and Purchase of Desert Lands—Use of Water.

That it shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such," and upon payment of twenty-five cents per acre—to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one section, by conducting water upon the same, within the period

of three years thereafter; *provided, however,* that the right to the use of water by the person so conducting the same, on or to any tract of desert land of six hundred and forty acres shall depend upon *bona fide* prior application; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said section of land, if surveyed, and if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding six hundred and forty acres to any one person, a patent for the same shall be issued to him; *provided,* that no person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres which shall be in compact form. [19 Stat. L. 377.]

The foregoing act of Congress of March 3, 1877, constituted a reservation and dedication of the riparian rights held at the time by the National Government so far as such rights affected the use for irrigation and other purposes enumerated in that act, and thereby the act abrogated the common law rule respecting riparian rights as to all lands settled upon or entered after March 3, 1877, except that the doctrine of riparian rights was not abrogated to the extent that the owner of riparian lands settled upon after that date could be deprived of a quantity of water reasonably essential for his domestic and stock requirements. *Hough* v. *Porter,* 51 Or. 318. See *Hedges* v. *Riddle,* 127 Pac. 548.

§ 2. Desert Lands Defined.

That all lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this Act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated. [19 Stat. L. 377.]

§ 3. States to Which Applicable—Determination of Desert Lands.

That this Act shall only apply to and take effect in the states of California, Oregon and Nevada, and the territories of Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and Dakota, and the determination of what may be considered desert land shall be subject to the decision and

regulation of the commissioner of the general land office. [19 Stat. L. 377.]

§ 4. Plan of Irrigation to Be Filed—Association of Entrymen.

That at the time of filing the declaration hereinbefore required, the party shall also file a map of said land, which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections, or fractional parts of sections, of desert lands, may associate together in the construction of canals and ditches for irrigating and reclaiming all said tracts, and may file a joint map or maps showing their plan of internal improvements. [26 Stat. L. 1096.]

§ 5. Expenditure and Cultivation Required.

That no land shall be patented to any person under this Act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid, the party so entering shall expend not less than one dollar per acre for the purpose aforesaid; and he shall in like manner expend the sum of one dollar per acre during the second and also during the third years thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid, the lands shall revert to the United States and twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be canceled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed; *provided,* that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre; *provided,* that proof be further required of the cultivation of one-eighth of the land. [26 Stat. L. 1096.]

§ 6. Existing Claims, How Perfected.

That this Act shall not affect any valid rights heretofore accrued under said act of March 3, 1877, but all *bona fide* claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this Act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said act, as amended by this Act, so far as applicable; and all acts and parts of acts in conflict with this Act are hereby repealed. [26 Stat. L. 1097.]

§ 7. Issue of Patents Upon Proof and Payment—Limit of Individual Holding—Additional Proofs.

That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands, but this section shall not apply to entries made or initiated prior to the approval of this Act; *provided, however,* that additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding Act shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled and the lands and moneys paid therefor, shall be forfeited to the United Statees. [26 Stat. L. 1097.]

(Act of August 4, 1894, c. 208, 28 Stat. L. 226.)

Time Extended for Final Proof of Entries.

That in all cases where declarations of intention to enter desert lands have been filed, and the four years' limit within which final proof may be made had not expired prior to January 1, 1894, the time within which such proof may be made in each such case is hereby extended to five years from the date of filing the declaration; and the requirement that the persons filing such declarations shall expend the full sum of

one dollar per acre during each year toward the reclamation of the land is hereby suspended for the year 1894, and such annual expenditure for that year, and the proof thereof, is hereby dispensed with; *provided,* that within the period of five years from filing the declaration satisfactory proof be made to the register and receiver of the reclamation and cultivation of such land to the extent and cost and in the manner provided by existing law, except as to said year 1894, and upon the payment to the receiver of the additional sum of one dollar per acre, as provided in existing law, a patent shall issue as therein provided. [28 Stat. L. 226.]

(*d*) Carey Act.

Reclamation of Desert Lands Under "Carey Act" and Acts Amendatory Thereof.

This so-called act was a part of an act of Congress of August 18, 1894, entitled, "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes," and is as follows:

§ 4. Grant to States Irrigating Desert Lands.

That to aid the public land states in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the Secretary of the Interior with the approval of the President be and hereby is, authorized and empowered, upon proper application of the State to contract and agree, from time to time, with each of the states in which there may be situated desert lands as defined by the act entitled "An Act to provide for the sale of desert land in certain states and territories," approved March 3, 1877, and the act amendatory thereof, approved March 3, 1891, binding the United States to donate, grant and patent to the state free of cost for survey or price such desert lands, not exceeding one million acres in each state, as the state may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each 160 acre tract cultivated by actual settlers, within ten years next after the passage of this Act, as thoroughly as is required of citizens who may enter under the said desert land law. [28 Stat. L. 422.]

Plan of Irrigation to Be Filed—Contracts for Reclaiming and Settlement.

Before the application of any state is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the state shall file a map of the said land proposed

to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the states to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any state contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the state shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement. [28 Stat. L. 422.]

The board is not authorized to insert in a contract any provision restraining the alienation of a contractor's lien or possessory interest in the land; and hence a provision in a contract that no agreement for the purchase of water rights and release of the lien or settlement should be entered into between the contractor and any settler until after the date of reclamation and notice thereof to the board, was void, especially in view of Sec. 3871, L. O. L., revising the law of 1901—this being a legislative recognizance that there was no such provision in the previous law. (*State* v. *Des Chutes Land Co.*, 129 Pac. 764.)

Patents for Reclaimed Lands—Limit to One Person—Surplus From Sale.

As fast as any state may furnish satisfactory proof according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the state or its assigns for said lands so reclaimed and settled; *provided*, that said states shall not sell or dispose of more than 160 acres of said lands to any one person, and any surplus money derived by any state from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such state. [28 Stat. L. 422.]

(Act February 19, 1909, c. 160, Stat. L. v. 35, p. 639.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled.

That any person who is a qualified entryman under the homestead laws of the United States may enter, by legal subdivisions, under the provisions of this Act, in the states of Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the territories of Arizona and New Mexico, three hundred and twenty acres, or less, of nonmineral, non-

irrigable, unsurveyed and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body, and not over one and one-half miles in extreme length; *provided,* that no lands shall be subject to entry under the provisions of this Act until such lands shall have been designated by the Secreatry of the Interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply.

That nothing herein contained shall be held to affect the right of qualified entrymen to make homestead entry in the states named in section one of this Act under the provisions of Section 2289 of the revised statutes, but no person who has made entry under this Act shall be entitled to make homestead entry under the provisions of said section, and no entry made under this Act shall be commuted.

(Amendments to Carey Act, Act of June 11, 1896.)

That under any law heretofore or hereafter enacted by any state providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section 4 of an act entitled, "An Act making appropriations for the sundry civil expenses of the government for the fiscal year ending June 30, 1895" approved August 18, 1894, a lien or liens is hereby authorized to be created by the state to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such state without regard to settlement or cultivation; *provided,* that in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part. [29 Stat. L. 413, 414.]

(Act of March 3, 1901.)

Section 3. That Section 4 of the act of August 18, 1894, entitled, "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes," is hereby amended so that the ten years' period within which any state shall cause the lands applied for under said act to be irrigated and reclaimed, as provided in said section as amended by act of June 11,

1896, shall begin to run from the date of approval by the Secretary of the Interior of the state's application for the segregation of such lands; and if the state fails within said ten years to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain. [31 Stat. L. 1133-1188.]

(Act of March 15, 1910.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled.

That to aid in carrying out the purposes of section 4, of the act of August 18, 1894, entitled, "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending 1895, and for other purposes," it shall be lawful for the Secretary of the Interior, upon application by the proper officer of any state or territory to which said section applies, to withdraw temporarily from settlement or entry areas embracing lands for which the state or territory proposes to make application under said section, pending the investigation and survey preliminary to the filing of the maps and plats and application for segregation by the state or territory; *provided*, that if the state or territory shall not present its application for segregation and maps and plats within one year after such temporary withdrawal the lands so withdrawn shall be restored to entry as though such withdrawal had not been made.

(*e*) State Desert Land Laws.

§ 3860. Accepting Conditions of "Carey Act."

The State of Oregon hereby accepts the conditions of section 4 of an act of Congress entitled, "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes," approved August 18, 1894, and amendments thereto, together with all grants of land to the State under the provisions of the aforesaid act.

§ 3861. Desert Land Board.

The selection, management and disposal of said land shall be vested in the Desert Land Board, which board is hereby created, consisting of the Governor, Secretary of State, State Treasurer, Attorney General and State Engineer of the State of Oregon. Said Desert Land Board is hereinafter designated as "the Board." The Board is hereby authorized to use a com-

mon seal to be procured by the Secretary of State, to employ necessary assistance, purchase material and supplies, and shall have charge and control of all reclamation work heretofore undertaken, contracted for or initiated by the State Land Board, and of the reclamation companies operating thereunder, prior to the passage of this Act, and the State Land Board shall transfer all records, documents, maps, or other papers relating to such reclamation work to the office of the Desert Land Board. Said Board shall have an office in the Capitol Building and its various members shall serve without additional compensation to their respective salaries as fixed by law.

§ 3862. Officers and Signatures of the Board.

The Governor shall be chairman and the State Engineer secretary of the Board. The secretary, or some authorized assistant, shall have custody of all the records and files of the Board, which shall be public records and open to inspection by the public during office hours; and shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provision of this Act; keep for public inspection maps or plats of all lands selected; receive entries of settlers on these lands, have the custody of the seal and attach the same to such instruments as the Board may direct, and do any and all work required by the Board in carrying out the provisions of this Act.

The signature of the Board shall be subscribed by the chairman, attested under seal by the secretary.

§ 3863. Duty of the Board.

Upon application made as hereinafter provided, by any person, association or corporation, desiring to reclaim any of the desert government lands in this State, it shall be the duty of the Board, and they are hereby authorized and directed, to make proper application for the lands which said applicant undertakes to reclaim, and make and enter into contract or agreement with the Secretary of the Interior for the donation and patent to the State, free of cost for survey or price, of such desert lands. Said Board hereby is authorized to make and enter into such contracts and agreements, and to create and assume such obligations in relation to and concerning said lands, as may be necessary to induce and cause such reclamation thereof as is required by the contract with the Secretary of the Interior and the acts of Congress; and is authorized and empowered to create a lien or liens which when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the necessary expenses of

reclamation, and reasonable interest thereon from the date of reclamation until said lien shall have been satisfied; *provided,* that in no event, in no contingency, and under no circumstances, shall the State of Oregon be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

§ 3864. Application for Withdrawal of Lands.

Any person, company of persons, association or incorporated company desiring to construct ditches, canals, or other irrigation work to reclaim land under the provisions of this act shall, at its own expense, file with the Board an application for the selection on behalf of the State by the Board of the land to be reclaimed. Such application shall conform to all requirements of the federal laws and rulings thereunder, and be accompanied by the necessary land office fees and such additional data as may be prescribed by the Board, including a preliminary estimate of costs and the amount of lien asked for. If the application is made in proper form, and it is made to appear that the proposed plan is feasible, that the applicant is financially able to complete the work, and that its completion will be to the best interests of the State, then it shall be the duty of the Board, at the expense and cost of the applicant, to make proper application for the selection and withdrawal of the lands included in such application. The Board is hereby authorized to do any and all things necessary to secure the withdrawal of lands on its own behalf by the Secretary of the Interior, and to let a contract to the lowest responsible bidder for the reclamation and colonization of the same when withdrawn.

§ 3865. Deposit to Accompany Application.

A deposit shall accompany each application in a sum not less than ten cents per acre up to and including one thousand acres and two cents per acre for each acre over such amount which sum shall be deposited with the Board and held in trust as a guarantee of good faith on the part of the applicant, to whom it shall be returned at the time of the execution of a contract between the State and said applicant, but in case the person, association or corporation making the application shall, upon segregation by the Secretary of the Interior of any or all of the lands mentioned therein, refuse to enter into a contract with the State, such deposit shall be forfeited to the State and credited to the reclamation fund hereinafter created.

§ 3866. Contract and Lien for Reclamation.

Upon the withdrawal of the land by the Department of the Interior, it shall be the duty of the Board to enter a contract for the reclamation of such land with the party submitting the application, which contract shall contain plans and specifications of the proposed irrigation works; *provided*, that no contract shall be executed by the Board until after an examination and report in writing by the State Engineer concerning the feasibility of the proposed plan of reclamation, sufficiency and availability of the water supply, and reasonableness of the estimate of cost and the lien requested. Such contract shall provide for the sale of water rights to settlers on said land in satisfaction of the reclamation lien allowed. This contract shall not be entered into on the part of the State until the withdrawal of the lands by the Department of the Interior and the filing of a satisfactory bond on the part of the proposed contractor, which bond shall be in a penal sum not less than two per cent of the lien to be allowed, and shall be conditioned for the faithful performance of the provisions of the contract with the State. The Board may, however, require the contractor to make a deposit at the time of application for entry of land by settlers to insure the transfer of the sysem in good condition and repair to the purchasers of water rights as herein provided, which deposit shall be returned by the Board at the time of such transfer.

§ 3867. Transfer of Control of Irrigation System.

For such time as specified in the contract, and not to exceed ten years from the date thereof, the control and management of the reclamation works shall be vested in the person, association, or corporation having contract with the State. At the expiration of such time the clear and unincumbered title to the reclamation works and all franchises thereunto belonging, also the control and management thereof, shall pass to the purchasers of water rights from the reclamation works in the manner to be prescribed in the contract, the contractor retaining an interest in such works proportional to the amount of water right unsold.

§ 3868. Contract, Time, Forfeiture.

No contract shall be made by the Board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within six months from date of contract; that the contractor shall secure for the use and benefit of the reclamation system all necessary water rights, rights- of-way, reservoir sites, or other property necessary for its construction and operation; that

construction shall be prosecuted diligently and continuously to completion; that a cessation of work under the contract with the State for a period of six months, without the sanction of the Board, will forfeit to the State all rights under said contract. The Board shall have power to extend the time in which to begin the construction of works, or for the completion of work, on account of delay caused by physical or engineering difficulties beyond the power of the contractor to control.

§ 3869. Contract Forfeited to State.

Upon the failure of any parties, having contracts with the State for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with specifications of the contract with the State, to the satisfaction of the Board, it shall be the duty of the secreary to give such parties written notice of such failures; and if after a period of sixty days from the sending of such notice they shall have failed to proceed with the work or to conform to the specifications of their contract with the State, or secure an extension of time as herein provided, the contract of such parties and all works constructed thereunder shall be at once and thereby forfeited to the State. In case of any forfeiture, cancellation, or relinquishment of any contract to the State, it shall be the duty of the Board so to declare and to give notice once each week, for a period of four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the State capital in like manner and for a like period, of the forfeiture, cancellation, or relinquishment of said contract, and that upon a fixed day proposals will be received at the office of the Board in the Capitol Building for the purchase of the incompleted works and for the completion of the irrigation works in accordance with such plans and specifications and such other conditions as may be prescribed by the Board, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received by the Board from the sale of the partially completed works under the provision of this Act shall first be applied to the expenses incurred by the State in their forfeiture and disposal, and the surplus, if any exists, shall be paid to the original contractors with the State.

§ 3870. State Not Responsible for Failure.

Nothing in this act shall be construed as authorizing the Board to obligate the State to pay for any work constructed under any contract, or to hold the State in any way responsible

to settlers for the failure of contractors to complete the work according to the terms of their contracts with the State.

§ 3871. Land Open for Entry.

No land shall be open to entry and no water rights shall be sold by the parties under contract with the Board until the construction of the works is sufficiently advanced to insure a water supply, and the entry of an order by the Board opening such land or any portion thereof to entry and sale. All applications to purchase lands, or for release of lien for construction of the reclamation works, shall be upon the forms provided by the Board. The "date of reclamation," for the purpose of this Act, shall be the date shown by the proof furnished the Secretary of the Interior by the Board at which water was furnished available for the reclamation of each tract in the list of lands.

See note under 28 Stat. L. 422.

§ 3872. Qualifications of Entryman, Payment.

Any citizen of the United States, or any person having declared his intention to become such, over the age of twenty-one years, may make application, under oath, to the Board, upon forms prescribed by it, to enter any of the lands reclaimed under the provisions of this act, in an amount not to exceed one hundred and sixty acres for any one person. Each application shall be accompanied by a contract, made and entered into by the applicant with the person, association, or corporations which has undertaken the reclamation of the tract in question, which contract shall show that the applicant has made proper arrangement for the purchase of the necessary water rights, and the release of the construction lien. Each application to the Board shall in addition be accompanied by a payment of not less than one dollar ($1.00) per acre for each acre included in the application, which payment shall be made by the contractor out of the first payment by the applicant, and shall be deposited by the Board with the State Treasurer, who shall credit the same to the "reclamation fund" herein created. If the application is not approved, the one dollar payment shall be returned to the contractor.

§ 3873. Deed.

Upon filing with the Board a satisfactory release of the construction lien apportioned by the Board against the land in any application, accompanied by satisfactory proof of reclamation, cultivation and settlement, as required by the rules of the Board, it shall be the duty of the Board to deed to the applicant, or the assignee of the applicant, the land described in such application All deeds authorized by the Board to be

executed under the provisions of this Act shall be executed by the chairman of the Board and attested under seal by the secretary; such deeds shall be in form a quit-claim and shall operate to convey only such title as the State may have in the land conveyed, which deeds, without acknowledgement, or copies thereof duly certified and attested under seal by the secretary of said Board certified from the official copy in his keeping, shall be admitted to record, and the Board shall preserve, in a suitable book, a true copy of such deeds, with an alphabetical index of the names of grantees, and such copies or certified copies thereof certified and attested as aforesaid shall be primary evidence of such conveyances.

§ 3874. Reclamation Fund, How Expended.

All moneys received by the Board, except as otherwise provided herein, shall be deposited with the State Treasurer and by him placed to the credit of a special fund to be known as the reclamation fund, which is hereby created. The "reclamation fund" shall constitute a trust fund in the hands of the State Treasurer to be used only for the payment of expenditures authorized by the Board in carrying out the provisions of this Act and in securing the reclamation of other lands, and shall constitute a continuing appropriation for that purpose. Payments from the reclamation fund for material or supplies furnished or for services rendered, or expenses incurred, under the provisions of this act, shall be paid upon vouchers signed by the secretary after authorization of the Board at the time and in the same manner as provided for the payment of salaries and expenses of State officers.

§ 3875. Rules of the Board.

The Board shall provide suitable rules for the filing of applications for constructing irrigation works, prescribing the nature of final surveys and the gathering of engineering data upon which the contract with the State is to be based, the manner in which the plans and specifications shall be submitted, and for the entry of and payment for the land and water rights by settlers and for the settlement or forfeiting of entry by settlers, and such other rules and regulations as are necessary to carry out the provisions of this act.

§ 3876. Report of Board.

The Board shall issue, on or before September 30th, of the year preceding the regular session of the legislature, a full report of its work under the provisions of this act, including a statement of expenditures and conditions of all funds, and such recommendations for legislation as are deemed advisable.

§ 3877. Appropriation.

There is hereby appropriated, out of any moneys in the general fund of the State Treasury not otherwise appropriated, the sum of four thousand dollars, or so much thereof as may be necessary for the payment of the expenses incurred by the Desert Land Board in carrying out the provisions of this Act, for the period of two years from the date of approval hereof. All payments for expenses incurred by the Board shall be paid at the same time and in the same manner as for State officers, and shall be paid first from any moneys which may be available in the reclamation fund herein created.

(*f*) COLUMBIA SOUTHERN PROJECT.

§ 1. Construction of Columbia Southern Irrigation Project.

The Desert Land Board is hereby authorized and directed, on behalf of the State of Oregon, to complete so far as can be done with the appropriation made by this Act, the reclamation of lands included in Oregon Desert Land Selection List No. 13, and private lands included in the project commonly known as the Columbia Southern Irrigation Project, in Crook County, Oregon. Said board is authorized and directed to make all necessary arrangements to perfect the State's title to said project, and to execute all contracts and agreements and make all arrangements necessary for the proper construction and completion of the irrigation works to reclaim the lands in said project.

§ 2. Project Engineer.

As soon as practicable after this act goes into effect, the said Board shall appoint, at a salary to be fixed by the Board, a project engineer, who shall serve at the pleasure of the Board and shall have immediate charge and supervision over the construction and operation of the reclamation works on said project. Said project engineer shall immediately prepare complete plans, specifications and estimates of cost, all of which shall be submitted to and approved by the Board before construction work is commenced. After said plans, specifications and estimates have been approved no material changes shall be made therein without the consent of the Board.

§ 3. Lien.

The said Board shall, as soon as possible, prepare a list fixing the price to be paid for water rights for each smallest legal subdivision or farm unit of the State or Carey Act land in said project, and a certified copy of said list shall be filed in the records of Crook County and from and after the date of reclamation of any tract designated in said list, a valid lien in

favor of the State of Oregon, shall exist against each tract in said list for the amount designated therein until the same shall have been paid. Said Board shall also designate the price to be paid for the sale of water rights to each smallest legal subdivision or farm unit of private lands within said project, and shall make all necessary contracts for the sale and delivery of water to said private lands. The total lien on State and Carey Act lands and the total amount to be realized from private lands shall together be so fixed as to insure the return to the State of Oregon of all money expended by the State in the reclamation of the lands in said project, and in addition thereto not less than $5.00 per acre for the reclamation fund. In fixing said lien the Board shall take into account the condition of the water right for each smallest legal subdivision, and no additional lien shall be placed upon land which now has a complete vested water right. Any person who holds a contract with the Columbia Southern Irrigation Company, or its successors in interest, for any tract in the project may execute a new contract with the State, for the reclamation, under the provisions of this act, of the land described in his original contract with said company receiving credit thereon for all money paid to said company under said original contract; or may surrender his contract and receive, in cash, the full amount of money paid to said company on such contract, but no such refund payments shall be made by the board prior to December 1, 1914.

§ 4. Contracts With Purchasers of Water Rights.

Said Board is authorized and directed to make all necessary arrangements to secure the settlement, cultivation and reclamation of said Carey Act lands; to accept applications for the entry of said lands; to make contracts for the purchase of water rights and release of lien for said lands; to make rules for their cultivation and settlement; and to prescribe the forms to be used for such purposes. Each contract with purchasers shall provide for the payment of the full amount of lien assessed against the tract covered by said contract, within a period of not to exceed ten years, with interest on deferred payments at six per cent per annum, and shall also provide for the payment of an annual maintenance fee, to be fixed by the Board. Contracts for the sale of water rights to private lands within the project shall be upon the same terms and conditions as for Carey Act lands, and the Board shall, in addition, require the purchaser to give a first mortgage on such private lands, to the State, as security for the payments due under the contract. Such contracts with purchasers, both on Carey Act and private lands, shall provide for the sale of a propor-

tionate interest in the reclamation system to each purchaser, and for the transfer of said reclamation to the purchasers when the water rights for a majority of the lands in the project have been fully paid for, the State retaining an interest proportionate to the unpaid balance on contracts.

§ 5. Forfeiture of Purchasers' Contracts.

Upon the failure of any purchaser having a contract with the Board to make payments of principal and interest according to the terms of such contract, it shall be the duty of the Board to notify such purchaser by registered mail of his default, and if such default shall continue for a period of six months after the sending of such notice, said Board is authorized to cancel said contract and all payments made thereunder shall be forfeited to the State and placed in the reclamation fund; and the Board is authorized to reopen the lands covered by said cancelled contract for entry and to re-sell water rights to said land to some other purchaser. Nothing in this section, however, shall be construed so as to prevent the Board from extending the time to make any payment due under any contract with a purchaser, when in its judgment, such purchaser is entitled to such extension of time.

§ 6. Rules and Regulations.

The said Board is hereby authorized and directed to make all necessary rules and regulations for properly carrying out the provisions of this act.

§ 7. Receipts From Project.

All money received as maintenance fee shall be applied to the cost of maintaining said project. All money received for the purchase of land or water rights in said project shall be deposited in the general fund of the State treasury until all expenses incurred by the State in connection with said project, including six per cent interest on all moneys advanced from the time of advancing the same shall have been repaid, after which time all money, except maintenance, received from the project shall be deposited in the reclamation fund.

§ 8. Appropriation.

For the purpose of carrying out the provisions of this act there is hereby appropriated out of any money in the general fund of the State treasury, not otherwise appropriated, the sum of two hundred thousand dollars ($200,000) for the year 1913, and the sum of two hundred fifty thousand dollars ($250,000) for the year 1914, or so much thereof as may be necessary; *provided, however,* that if any of the money appropriated for

1913 shall not be expended during said year, it shall be available for use during the year 1914, in addition to the amount appropriated for said year 1914. All expenditures incurred under the provisions of this act shall be paid at the same time and in the same manner as State officers, upon vouchers approved by the board. [L. 1913, c. 119.]

(The constitutionality of this act is upheld in the decision rendered in *McMahon* v. *Olcott,* 133 Pac. 836.)

(*g*) Navigable Waters.

The said state of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said state of Oregon, so far as the same shall form a common boundary to said state, and any other state or states now or hereafter to be formed or bounded by the same; and said rivers and waters, and all the navigable waters of said state, shall be common highways and forever free, as well as to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll therefor. [Act of Congress admitting the State of Oregon into the Union, § 2.]

Navigable Waters to be Free Highways: We presume that all the navigable waters of said state shall be common highways and forever free as well to the inhabitants of the state as to all other citizens of the United States, etc., does not refer to physical obstruction of those waters, but to political restrictions which hamper the freedom of commerce. Until congress acts respecting navigable streams entirely within a state, a state has plenary power to authorize the construction of a bridge. Willamette Iron Bridge Co. *v.* Hatch, 125 U. S. 1, 8 Sup. Ct. Rep. 811.

Concurrent Jurisdiction: The district court of the United States for the district of Oregon also has concurrent jurisdiction over the Columbia River. The Annie M. Small, 2 Saw. 226.

OREGON COURT DECISIONS RELATING TO WATER RIGHTS, 1909-1913.

ABANDONMENT.

Pringle Falls Elec. Power & Water Co. *v.* Patterson *et al.*: 132 Pac. 526.
Hough *v.* Porter: 51 Or. 318.
Bormon *v.* Blackmon; 60 Or. 304.
Hedges *v.* Riddle: 63 Or. 257.

ADJUDICATIONS.

Claypool *et al. v.* O'Neill: 133 Pac. 349.

ADVERSE USER.

Cantrall *v.* Sterling Mining Co.: 61 Or. 516.
Hough *v.* Porter: 51 Or. 318.
Watts *v.* Spencer: 51 Or. 262.
Ison *v.* Sturgill: 57 Or. 109.
McCoy *v.* Huntley: 60 Or. 372.

CAREY ACT LANDS.

State *v.* Des Chutes Land Co.: 129 Pac. 764.

CHANGE OF USE.

Williams *v.* Altnow: 51 Or. 275.
Whited *v.* Cavin: 55 Or. 98.

DITCHES.

Whited *v.* Cavin: 55 Or. 98.
Ison *v.* Sturgill: 57 Or. 109.
Shaw *v.* Proffitt: 57 Or. 192.
Dalton *v.* Kelsey: 58 Or. 244.

DAMAGES—RIGHT OF ACTION.

Nevada Ditch Co. *v.* Pacific Live Stock Co.: 127 Pac. 984.

DOMESTIC USE.

Hedges *v.* Riddle: 127 Pac. 548.

DUE DILIGENCE.

Whited *v.* Cavin: 55 Or. 98.

DUTY OF WATER.

Donnelly *v.* Cuhna: 61 Or. 72.
Cantrall *v.* Sterling Mining Co.; 61 Or. 516.
Little Walla Walla Irr. Co. *v.* Finis Irr. Co.: 62 Or. 348.
Hough *v.* Porter: 51 Or. 318.

IRRIGATION COMPANIES.

Old Mill Ditch & Irr. Co. *v.* Breeding: 133 Pac. 89.
Paine *v.* Milton Irrigation Co.: 63 Or. 576.

IRRIGATION DISTRICTS.

Paine *et al. v.* Milton Freewater & Hudson Bay Irr. Co. *et al.*: 63 Or. 576.
Hall *v.* Hood River Irrigation District: 57 Or. 69.
Gibbons *v.* Hood River Irr. Dist.: 133 Pac. 772.

INJUNCTIONS.

Carnes *v.* Dalton: 56 Or. 596.
Shaw *v.* Proffitt: 57 Or. 192.
Caviness *v.* La Grande Irr. Co.: 60 Or. 410.
Pacific Live Stock Co. *v.* Silvies River Irr. Co.: 200 Fed. 487.
Bowen *v.* Spaulding: 63 Or. 392.

MUNICIPAL USE.

City of Joseph *v.* Joseph Water Works: 57 Or. 586.
Batchelder *v.* Hartung: 128 Pac. 439.
Sherred *v.* City of Baker: 63 Or. 28.
City of McMinnville *v.* Howenstine: 56 Or. 451.
City of Portland *v.* Metzger: 58 Or. 276.

NATURE AND EXTENT OF RIGHT—HOW DETERMINED.

Donnelly *v.* Cuhna: 61 Or. 72.
Caviness *v.* La Grande Irr. Co.: 60 Or. 410.
Williams *v.* Altnow: 51 Or. 275.
Hough *v.* Porter: 51 Or. 318.
Whited *v.* Cavin: 55 Or. 98.
Carnes *v.* Dalton: 56 Or. 596.
Ison *v.* Sturgill: 57 Or. 109.
Porter *v.* Pettingill: 57 Or. 247.

POLLUTION OF STREAM BY MINING COMPANY.

Provolt *v.* Barley: 61 Or. 58.

RIGHT OF WAY.

City of Portland *v.* Metzger: 58 Or. 276.
Shaw *v.* Proffitt: 57 Or. 192.
Ruhnke v. Aubert: 58 Or. 6.
Tone *v.* Tillamook City: 58 Or. 382.
McMinnville *v.* Howenstine: 56 Or. 451.

RIPARIAN OWNERSHIP.

Bowen *v.* Spalding *et al.*: 128 Pac. 37.
Caviness *v.* La Grande Irr. Co.: 60 Or. 410.
Davis *v.* Chamberlain: 51 Or. 304.
Little Walla Walla Irr. Co. *v.* Finis Irr. Co.: 62 Or. 348.
Hedges *v.* Riddle: 127 Pac. 548.
Williams *v.* Altnow: 51 Or. 275.
Hough *v.* Porter: 51 Or. 318.
Coquille Mill & Mercantile Co. *v.* Johnson: 52 Or. 547.
Trullinger *v.* Howe: 53 Or. 219.
Sherred *v.* City of Baker: 63 Or. 28.

WASTEFUL USE OF WATER.

Little Walla Walla Irr. Co. *v.* Finis Irr. Co.: 62 Or. 348.

NOTE.—The constitutionality of the 1909 water code is upheld in the Silvies River Determination, 199 Fed. 495. Similar laws in Wyoming and Nebraska are upheld in Farm Inv. Co. *v.* Carpenter, 9 Wyo. 110; 61 Pac. 267; Crawford *v.* Hathaway, 67 Neb. 325; 93 N. W. 795, and the Oregon case was decided upon the same theory which sustained the constitutionality of these other laws.

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